

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/08/2004

To: Office of the General Counsel

Attn: Investigative Law Unit
Room 7326

International Operations

Attn: IOS/IOU-2

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From: [REDACTED]

Contact: [REDACTED]

x [REDACTED]

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Approved By: [REDACTED]

Drafted By: [REDACTED]

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Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: This communication responds to the lead set for ALL RECEIVING OFFICES in the referenced communication.

Reference: 66F-HQ-C1364260 Serial 5

Details: The one incident that comes to mind concerning [REDACTED] is the Patriot Act Provisions to seize money in a corresponding bank account of a Middle Eastern bank. There was one Letters Rogatory from the DOJ-OIA including cases in which banking records were sought. [REDACTED] is a country with banking secrecy laws, and it is difficult to get financial records. However, when a bank in [REDACTED] has money in a corresponding account in a U.S. bank, it is possible to freeze the account until the information sought is obtained by the United States. This matter met with some limited success.

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[REDACTED] considers this lead covered.

COVERED

OTHER/YES

068PAP07EC

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To: Office of the General Counsel From:
Re: 66F-HQ-C1364-0, 03/08/2004

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LEAD(s) :

Set Lead 1: (Info)

ALL RECEIVING OFFICES

For information only.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/09/2004

To: General Counsel

Attn: Investigative Law Unit

International Operations

Attn: SSA [redacted] IOU-II

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From: [redacted]

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Contact: [redacted]

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Approved By: [redacted] DP

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Drafted By: [redacted]:ac

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Case ID #: 66F-HQ-C1364260-144 (Pending)
66F-HQ-C1384970-185 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To provide results and cover lead.

Reference: 66F-HQ-C1364260 Serial 5

Details: For information of recipients, to date, [redacted]
has not had the opportunity to use any of the investigative tools
created by the USA PATRIOT ACT.

Consequently, [redacted] is negative for any feedback
which is responsive to lead 66F-HQ-C1364260 Serial 5, and
therefore considers above referenced lead covered.

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To: General Court From:
Re: 66F-HQ-C136, 03/09/2004

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LEAD(s) :

Set Lead 1: (Info)

ALL RECEIVING OFFICES

Read and clear.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/15/2004

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To: International Operations
General Counsel

Attn: IO2, [redacted]

Attn: [redacted] ILU

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From: [redacted]

Contact: [redacted] [redacted]

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Approved By: [redacted]

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Drafted By: [redacted]

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Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970 (Pending) - 7930

Title: USA PATRIOT ACT;
SUNSET PROVISIONS

Synopsis: Response to lead on use of the USA Patriot Act.

Reference: 66F-HQ-C1364260 Serial 5
66F-HQ-C1384970 Serial 7564

Details: [redacted] is a conduit of information from Field Offices and FBIHQ to [redacted] liaison; however, [redacted] assumes that a number of investigative leads were generated for this office because of the provisions of the USA Patriot Act. [redacted] hopes that Field Offices are responding to this request so that OGC is able to provide the necessary justification to Congress.

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To: International Operations From: [REDACTED]
Re: 66F-HQ-C1364260, 03/15/2004

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LEAD(s):

Set Lead 1: (Info)

ALL RECEIVING OFFICES

Read and clear.

I: [REDACTED] PATRIOT.EC

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

05-CV-0845
DATE: 09-09-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (c)
DECLASSIFY ON: 09-09-2030

Precedence: DEADLINE 03/19/2004

Date: 03/17/2004

To: Office of General Counsel **Attn:** Investigative Law Unit

Room 7326

From:

Contact:

Approved By:

Drafted By:

Case ID #: 66F-HQ-C1364260 -17

66F-HQ-1384970 -8049

66F-28229 -8

ALL INFORMATION CONTAINED
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Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: Review of [redacted] USA PATRIOT Act subfiles previously established to document the effective use of these tools in anticipation of the 12/31/2005 sunset.

Reference: 66F-HQ-C1364260 Serial 5

Details: On 03/26/2003, via EC to all employees, [redacted] established USA PATRIOT Act subfiles to document the effective use of these provisions which are scheduled to sunset on 12/31/2005.

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The USA PATRIOT Act provisions subject to sunset concern, voice mail, nationwide search warrants for e-mail, information sharing, voluntary disclosure by ISP, immunity from civil liability, expanded predicates for Title III, roving FISA surveillance, new standard for FISA Pen/Trap, new standard for business records under FISA, changes to "primary purpose" standard in FISA, monitoring communications of computer trespassers, and certification forms submitted to FinCen for terrorism and money laundering investigations.

[redacted] periodically sends out e-mails to all personnel as a reminder that the usage of these provisions must be tracked and documented in the appropriate subfiles.

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The results of [redacted] (S)

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To: Office of General Counsel From: [REDACTED]
Re: 66F-HQ-C136480, 03/17/2004

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these [REDACTED] requests enabled investigators to identify
previously unknown [REDACTED] associated with
captioned subjects. Additionally, with respect to one of these b2

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To: Office of General Counsel From:
Re: 66F-HQ-C1364800, 03/17/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Information only.

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/18/2004

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To: General Counsel

Attn: Investigative Law Unit
[redacted] Rm. 7326

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From: [redacted]

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Contact: CDC [redacted] [redacted]

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Approved By: [redacted]

DATE: 09-09-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (c)
DECLASSIFY ON: 09-09-2030

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Drafted By: [redacted]

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Case ID #: 66F-HQ-C1364260 (Pending)

05-CV-0845

66F-HQ-C1384970 (Pending)

66 [redacted]-63323 (Pending)

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Title: USA PATRIOT ACT

SUNSET PROVISIONS

[redacted] DIVISION STATISTICS

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Synopsis: Provide OGC with requested information regarding
[redacted] use of Patriot Act Provisions.

Reference: 66F-HQ-C1364260 Serial 5

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Details: Referenced serial requested statistical information
from [redacted] regarding use of USA Patriot Act provisions. The
requested information from [redacted] IT and FCI investigations is as
follows:

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STATISTICS

Technique

Times Used

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

As requested in referenced serial. Read and clear.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/17/2004

To: General Counsel

Attn: Investigative Law Unit
Room 7236

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From: [REDACTED]

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Contact: [REDACTED]

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Approved By: [REDACTED]

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Drafted By: [REDACTED]

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Case ID #: 66F-HQ-C1364260-20

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: [REDACTED] examples of the use of USA Patriot Act sunset provisions to achieve investigative goals.

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Details: The following is set forth regarding use of investigative tools created by the Patriot Act:

1.) Intercepting communications of computer trespassers.

[REDACTED]

[REDACTED]

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[REDACTED]

To: General Counsel From:
Re: 66F-HQ-C1364260, 03/17/2004

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2.) Changes to "Primary Purpose" Standard for FISA.

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The changes to the FISA Sections 218 and 504 enabled criminal investigators and prosecutors to review and present

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/17/2004

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material leading to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The material support
portion of the investigation is ongoing.

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3.) Information Sharing

The cooperation between other Government Agencies within the Intelligence Community (IC) and the FBI has resulted in significant improvements in the conduct of everyone's mission. [REDACTED] has prepared FISA requests in two separate matters based on information from the IC. Three potential compromises in ongoing foreign intelligence investigations were averted through the timely sharing of information. Numerous IT cases benefitted from the receipt of intelligence from the IC and vice versa. Follow-up investigations have been coordinated with the IC when FBI - IT subjects have departed the U.S., whether the departure was voluntary or not. Numerous IIRs disseminating foreign intelligence and/or positive terrorism intelligence have been generated.

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DATE: 08-26-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv00845
REASON: 1.4 (c)
DECLASSIFY ON: 08-26-2030

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/18/2004 155

To: FBIHQ

Attn: Office of General Counsel
Investigative Law Unit

Room 7326

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From: [REDACTED]

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Contact: ADC [REDACTED]

Ext. [REDACTED]

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Approved By: [REDACTED] *rh*

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Drafted By: [REDACTED]

: *jaw*

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Case ID #: 66F-HQ-C1364260 (Pending) 8124
66F-HQ-C1384970 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: [REDACTED] response to Patriot Act survey.

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Reference: 66F-HQ-C1364260 Serial 5
66F-HQ-C1384970 Serial 7564

Details: A canvas was conducted of all counterintelligence and counterterrorism squads regarding the provisions of the USA Patriot Act which are subject to the sunset provisions. The following details the results:

Voice Mail (Section 209) [REDACTED]

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is a valuable tool. In an emergency situation obtaining a search warrant would be much faster and less complicated than obtaining an emergency Title III.

(S)

Nationwide Search Warrants for E-mail (Section 220)-

The [REDACTED]

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this is a crucial provision for [REDACTED] Prior to the USA Patriot Act a great deal of manpower was used obtaining

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To: FBIHQ From: [REDACTED]
Re: 66F-HQ-C1364260 03/18/2004

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search warrants for other divisions for e-mail carriers which are located in the [REDACTED] still spends a great deal of time serving process for other divisions, however, it is nothing like the days after 9/11 when SAs were required to draft and swear to affidavits for all the other divisions.

Voluntary Disclosures (Section 212)

[REDACTED] (S)
[REDACTED] This provision is essential to [REDACTED] for the same reasons as stated above. Due to the number of communication carriers in the division, it is imperative that we are able to request this type of information from communications carriers in an emergency situation. [REDACTED] (S)

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Information Sharing (Section 203(b) &(d)) - [REDACTED]

[REDACTED] A considerable amount of Grand Jury material has been shared, but to this date [REDACTED] investigations have generated information pertinent to any CI or CT investigations. However, due to the new 315 classification and the removal of the wall between the criminal and intelligence worlds, it is imperative that information be permitted to flow in both directions.

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Intercepting Communications of Computer Trespassers (Section 217) - [REDACTED]

[REDACTED] Although, most of [REDACTED] computer hacking cases have [REDACTED] it is anticipated that it will occur in the near future. [REDACTED] (S)

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Expanded Predicates for Title III (Sections 201 & 202) - [REDACTED]

[REDACTED] It is very important that all tools be made available in the fight against terrorism. At this time, FISA is primarily being used to obtain ELSUR on [REDACTED] IT subjects, however, it is crucial that the FBI have the ability to neutralize terrorists where the danger they pose outweighs the value of the intelligence that we maybe able to collect. Title III is an excellent investigative tool that should be available in the fight against terrorism. [REDACTED] (S)

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Roaming FISA Surveillance (Section 206) - [REDACTED]

[REDACTED] It was necessary to cover a subject's move [REDACTED] also has a [REDACTED] (S)

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To: FBIHQ From: [REDACTED]
Re: 66F-HQ-C1364260 03/18/2004

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[REDACTED] (S)

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New Standard for FISA Pen/Trap (Section 214) - [REDACTED]

[REDACTED] (S)
[REDACTED] This technique has provided contacts for
potential assets and has aided in developing the subject's
personal profile. However, this is a under utilized technique
due to the length of time it takes to obtain, most agents wait
and request a FISA [REDACTED]

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[REDACTED] (S)

Changes to "Primary Purpose" Standard for FISA
(Section 218) - [REDACTED]

[REDACTED] (S) b1
However, it is arguable that this provision
has aided in obtaining the majority of IT FISAs. It is
necessary to maintain this provision in order to continue
investigating counterterrorism under the 315 classification.

New Standard for Business Records under FISA
(Section 215) - [REDACTED]

[REDACTED] (S)

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(Rev. 01-31-2003)

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/18/2004

To: General Counsel

Attn: Investigative Law Unit
[redacted]
Room 7326

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From: [redacted]

Legal Unit

Contact: CDC [redacted] [redacted]

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Approved By: [redacted]

DATE: 09-09-2005
CLASSIFIED BY 65179 DMH/JK
REASON: 1.4 (c)
DECLASSIFY ON: 09-09-2030

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Drafted By: [redacted]

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Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970

05-CV-0845

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: Summary of benefits [redacted] has received
from various provisions of the USA PATRIOT Act.

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Details: The following provides statistics, examples, and
brief narratives summarizing some of the benefits the [redacted]
[redacted] has received from various provisions of the USA PATRIOT
Act:

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**Nationwide Search Warrants for E-mail and Associated
Records - Section 220 of the Act. See 18 U.S.C. § 2703.**

This technique has been used frequently for e-mail
records. Without it service would have been much more time
consuming and less successful.

[redacted] During this investigation, FISA coverage was
conducted for approximately one year. A significant part of the
coverage included several e-mail accounts [redacted]

[redacted] Part of the success and ease of
initiating this coverage hinged on this provision. Each of the e-
mail providers were located in a different part of the country.
If this provision were not in place, this coverage, which was
deemed urgent at the time of initiation, would have been
dramatically hindered and crucial intelligence lost or delayed.

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Information Sharing - Section 203(b) & (d) of the Act.

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364268 03/18/2004

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Generally speaking we are now able to discuss our cases with other agencies much more freely. This has streamlined and greatly facilitated our investigations.

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1990 [REDACTED] 66215 (Closed) [REDACTED]

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[REDACTED] (S)
[REDACTED] Investigation revealed subject to be a con-
man who was primarily raising money for his own personal benefit.
However, investigation also revealed subject was engaged in
various criminal activities. Sections 203(b) and 203(d) were
utilized in allowing information from the criminal case to be
shared with the intelligence investigator. The intelligence
investigation produced an enormous amount of intelligence,
including information received from several foreign intelligence
services. Section 218 and Section 504 were utilized to share the
pertinent parts of that intelligence with the criminal
investigator, as well as the federal prosecutors. Without all
three of these provisions, both the criminal and intelligence
investigators would have been conducting simultaneous and
parallel investigations, without the ability to have a complete
picture of the subject, thereby, resulting in lengthy and
duplicative investigative efforts. As a direct result of these
enabling provisions of the USA Patriot Act, the subject was
ultimately convicted on the criminal charges and, consequently,
deported from the United States. However, prior to subject's
deportation, subject provided a tremendous amount of valuable
information which has been used in approximately a dozen [REDACTED]
[REDACTED] investigations alone, plus an additional half dozen cases
in other divisions across the United States.

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[REDACTED] The information sharing portion of the act has
impacted the effectiveness of the [REDACTED] which
participated in the referenced case which involved threat
mailings. The ability to share information has enriched FBI
liaison with State, Local and other Federal agencies, resulting
in better relationships.

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When events broke in this case requiring JTTF response,
the ability to organize an action plan among the agencies was
greatly enhanced. A level of trust resonated among investigators
which resulted in a style of teamwork imperative in the first few
days after the threat mailings. The ability to share information
relieved the case agent from being overwhelmed, and allowed for a
much more effective investigation.

[REDACTED] This is an investigation of an increasingly
[REDACTED] organization, with its leaders in the
United States advocating and preparing for violence. In recent
years, radicals have infiltrated the group's leadership in the US
with several key members advocating violence. [REDACTED]

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260 03/18/2004

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[REDACTED] this threat would be difficult to combat given the respect and legal protections the group enjoys in the US and overseas.

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Information sharing with [REDACTED] and [REDACTED] is essential to identifying the subjects' associates, travel, and activities in support of this organization.

[REDACTED] In this case, we opened a parallel investigation on the criminal side. Subpoenas were used for financial information and NSLs for toll records. Previously, we would have had difficulty sharing the NSL results with the criminal side. When we obtained pertinent information from the criminal side, we had to send an NSL for the same information in order to use it for the intelligence side, duplicating voluminous work on the part of the Bureau and the service provider. Also, the criminal case agent would not have been apprized of significant developments on the intelligence side of the case. Recently,

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[REDACTED] The criminal case agent would not have been in a position to assist us if he had not been fully briefed in on the case. Due to the criminal agent's work, a valuable source was successfully recruited.

Due to the complexities inherent in this [REDACTED] terrorism investigation, this case has been a joint effort between the following agencies: FBI [REDACTED]

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[REDACTED] These cases involve [REDACTED]

[REDACTED] The purpose of the investigation is to determine if these businesses and/or their owners/employees are forwarding funds overseas in support of terrorist activities.

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The Information Sharing sections of the USA Patriot Act have been critical in that the investigation is being conducted [REDACTED]

[REDACTED] Information sharing between the FBI and these agencies has been instrumental in identifying subjects, conducting surveillance and obtaining various records. Due to these Patriot Act provisions, intelligence information can be shared which greatly affects the utilization of resources and the focus of the case.

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/18/2004

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[REDACTED]

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[REDACTED] This investigation was initiated based on information sharing between intelligence agencies, [REDACTED] and FBI. This aspect of intelligence sharing between agencies in the intelligence community has been a tremendous asset in this investigation, particularly with [REDACTED]
[REDACTED]

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At the outset of this investigation, a parallel criminal investigation was initiated, which at the time was still under the mandate of the previous guidelines which forbid information sharing between intelligence and criminal investigations of the same subject. This was an excellent opportunity to witness the difference between the guidelines when a "wall" existed and the new guidelines where the "wall" was removed between criminal and intelligence investigations. Under the criminal investigation, subpoenas were issued for toll records and financial information. Since this was during the "wall" period, the criminal agent and the intelligence agent could not and would not be in the same room while there was information received as a result of the subpoenas. Likewise, when intelligence information was received from a linked FISA investigation, the criminal agent would remain completely unaware of the new intelligence which could aid in the direction of the criminal investigation. The AUSA assigned to the investigation was particularly uncomfortable with the investigation for fear of violating the guidelines of influencing the intelligence investigation. This placed the AUSA in a precarious position: needing to know all the information from both aspects of the investigation and yet not wanting to mistakenly report information from the criminal agent to the intelligence agent and vice versa. The "wall" procedures hindered the investigation of terrorism cases tremendously.

After the "wall" was removed, the difference in the investigation was obvious and significant. Meetings between the USA, AUSA, intelligence agents, criminal agents were regular and productive. This allowed a team aspect to investigations between the USA's office and the agents in the field.

Practical aspects of information sharing involved less repetitive effort duplicating information. An example of this would be information from subpoenas and National Security Letters

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260 03/18/2004

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(NSL). Before, the criminal investigation could not have any information gathered as a result of a NSL and likewise with intelligence investigations having information gathered from a subpoena. This required two documents to be issued per one piece of information.

Since the implementation of the new provisions, information from this investigation has been shared with several other FBI field offices which has resulted in an expanded picture of potential terrorist activities within the United States. This provision is crucial to the ongoing effort against terrorist threats to the United States.

New Standard for FISA Pen/Trap - Section 214 of the Act.

[REDACTED]

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accounts.

[REDACTED]

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[REDACTED] The old standard of "specific and articulable facts" that the line was used by an agent of a foreign power was changed to a relevance to terrorism standard. [REDACTED]

[REDACTED]

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/18/2004

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**Changes to "Primary Purpose" Standard for FISA -
Section 218. Section 504 amended FISA to allow personnel
involved in a FISA to consult with law enforcement officials.**

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281F [REDACTED] 66686: Information was shared from the case agent in the above referenced 1990 [REDACTED] 66215 investigation under Section 218 and Section 504 with the criminal investigator and federal prosecutors to convict one of the subjects of this investigation. Having the criminal side fully apprized of all of the intelligence was of great benefit as this helped in the coordination of surveillance and the interviews of certain individuals connected to this investigation. After completing his sentence in federal prison, this particular subject of this criminal investigation will also be deported from the United States. All of this was facilitated by the sharing provisions under the USA Patriot Act.

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[REDACTED] (S)
[REDACTED] Section 218 has enabled the intelligence received from a foreign intelligence/security agency regarding subject to be shared with federal prosecutors both in two Divisions. This is an ongoing investigation.

[REDACTED] This intelligence investigation was opened based solely on information provided by the subject of above referenced closed 1990 [REDACTED] 66215 investigation. This information alleged the

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[REDACTED] Through the coordinated efforts of various divisions and resident agencies, information was received from several foreign intelligence services regarding subject. This intelligence included information about [REDACTED]

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[REDACTED]
As a direct result of being able to share this intelligence under Section 218 and Section 504 of the USA Patriot Act with other agencies involved with this investigation, [REDACTED]

[REDACTED]
[REDACTED] Without these referenced provisions of the USA Patriot Act, this coordinated investigative effort between a multitude of various federal, state, local, and international law enforcement

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/18/2004

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agencies would have been much more difficult with possibly a much different result.

[REDACTED] The changing of the FISA standard from a "primary purpose" to "a significant purpose" has had a dramatic impact on terrorism cases and this particular investigation would not have been possible without this change. This investigation centered on [REDACTED]

[REDACTED] The FISA coverage of the subject was initiated after intelligence indicated that [REDACTED]

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[REDACTED] This information would fall primarily in the criminal aspect of a terrorist attack and negate the "primary purpose" standard for FISA coverage since the purpose was not to gather intelligence but to use the criminal justice system to stop a terrorist attack. As a result of the changing standard, FISA coverage was initiated and further information was gathered to accurately assess the threat.

New Standard for Business Records under FISA - Section 215.

[REDACTED] We have obtained [REDACTED] NSLs for records from a [REDACTED]

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~~SECRET~~

To: General Counsel From:
Re: 66F-HQ-C136425 03/18/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and clear.

♦♦

~~SECRET~~

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/18/2004

b6

b7C

To: General Counsel

Attn: Investigative Law Unit

attn: [REDACTED] Rm 7326

From: [REDACTED]

b2

CDC

b7E

Contact: SSA [REDACTED]

b2

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b7C

Approved By: [REDACTED]

b6

Drafted By: [REDACTED]

mrs

b7C

Case ID #: 66F-HQ-C1364260-24 (Pending)
66F-HQ-C1384970-8144

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: Providing OGC, ILU with information concerning provisions of the Patriot Act subject to the Sunset Provision.

Reference: 66F-HQ-1085160 Serial 57
66F-HQ-C1364260 Serial 1

Details: A survey conducted among the Supervisory Special Agents in the [REDACTED] division indicate that, by far, the most important and utilized provision of the Patriot Act has been the delegated authority to the field to utilize NSLs in appropriate investigations. Also the ability to share information between intelligence investigations and criminal investigations has proven invaluable.

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b7E

As to the specific provisions of the Patriot Act subject to sunset provisions [REDACTED] has no anecdotal or statistical information to provide ILU.

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/18/2004

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b7E

LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT INVESTIGATIVE LAW UNIT

Read and clear.

♦♦

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/16/2004

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To: General Counsel

Attn: [redacted]
Investigative Law Unit

From: [redacted]
Legal Unit

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Contact: SSA [redacted], CDC, [redacted]

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Approved By: [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-09-2005 BY 65179 DMH/KM

Drafted By: [redacted]:dlk

b6
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Case ID #: 66F-HQ-C1364260-25
66F-HQ-C1384970-8151
66F-CI-A71844-133

05-CV-0845

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To report the [redacted] use of USA Patriot Act sunset provisions as requested in referenced EC.

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Reference: 66F-HQ-C1364260 Serial 5

Details: To report [redacted] positive use of investigative tools provided by provisions of the Patriot Act, subject to a legislative "sunset" clause.

Information Sharing (Section 203) March 2004. Gave authority to Joint Terrorism Task Force agents to [redacted]
[redacted]
[redacted] of
suspected AQ fund raiser. May provide circumstantial evidence of suspect materially supporting terrorism.

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[redacted]

b2

Use of Federal Grand Jury Subpoenas.

Roving FISA Surveillance - Section 206 - The [redacted]
[redacted] RA Joint Terrorism Task Force [redacted]

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[redacted]

To: General Counsel From: [redacted]
Re: 66F-HQ-C13642, 03/16/2004

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[redacted]

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New Standard for FISA Pen/Trap (Section 214) - This technique has been utilized multiple times within our district. Information from this technique has led to discovery of other suspects. Other investigations are ongoing. This investigative tool has been used with electronic communications [redacted]

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Changes to "Primary Purpose" Standard for FISA (Section 218) - amended under Section 504 - coordination w/ law enforcement under FISA. - FISA information is shared routinely with all cleared personnel involved in the Joint Terrorism Task Force.

New Standard for Business Records under FISA (Section 215) - the [redacted]

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The following sections are not listed in the referenced EC, but are included due to their value to investigators:

Scope of subpoenas for records of electronic communications (Section 210) - the [redacted] routinely uses Grand Jury Subpoenas to cover leads and further investigate suspects in Joint Terrorism cases. The [redacted] processes approximately 10 National Security letters per week, covering ECPA, RFPA and FCRA.

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Modification of authorities relating to use of pen registers and trap and trace devices (Section 216)

November 2003. Pen's initiated on [redacted]

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[redacted] Investigation by Joint Terrorism Task Force continuing.

Defendant [redacted] is charged in a federal criminal complaint in [redacted] with Unlawful Flight to Avoid Prosecution (UFAP). He was charged by local authorities with trafficking in marijuana, possession of marijuana, and conspiracy. There is also a federal investigation open for making threatening communications. [redacted]

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[redacted] -Louisville, Ky., and [redacted] -Dallas, Texas.) The PATRIOT Act allowed us to obtain the pen/trap orders from a magistrate judge in our district for [redacted]

[redacted]. This saved a

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C13642, 03/16/2004

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great deal of time and meant that we did not have to involve
AUSAs from two other districts. [REDACTED] remains a fugitive.

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(S)

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b7A

To: General Counsel From:
Re: 66F-HQ-C13642, 03/16/2004

b2

b7E

LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and clear.

♦♦

(Rev. 01-31-2003)

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WHERE SHOWN OTHERWISE

~~SECRET~~

DATE: 08-29-2005
FBI INFO.
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (c)
DECLASSIFY ON: 08-29-2030

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/17/2004

b6

To: General Counsel

Attn: ILU, Room 7326

b7C

Attention: [REDACTED]

From: [REDACTED]

b2

Squad 21

Contact: SSA [REDACTED]

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Approved By: [REDACTED] *duky*

b7C

Drafted By: [REDACTED] *asm*

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b7C

Case ID #: 66F-HQ-C1364260 ; 26.

Title: USA PATRIOT ACT
SUNSET PROVISIONS

b2

Synopsis: To provide a brief narrative summarizing [REDACTED] use of several authorities implemented by the USA Patriot Act which are subject to sunset provisions. Referenced lead covered. b7E

Reference: 66F-HQ-C1364260 Serial 5

Details: Above referenced communication requested offices to provide the Investigative Law Unit (ILU), Office of the General Counsel (OGC), with "statistics, good examples or anecdotes, or at the very least, a brief narrative summarizing the benefits the office has received from the provisions...."

To that end, [REDACTED] provides the following information: b2

b7E

1. **Voice Mail** - Section 209 of the Act permits law enforcement to obtain a search warrant or court order for voice mail messages maintained by a communications provider under 18 USC 2510 or 2703.

[REDACTED] Although this investigative technique [REDACTED] it is a valuable tool. In an emergency situation obtaining a search warrant would be much faster and less complicated than obtaining an emergency Title III. (S)

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~~SECRET~~

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C13642, 03/17/2004

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2. **Nationwide Search Warrants for email** - Section 220 of the Act permits the issuance of search warrants with nationwide jurisdiction to an electronic communications service provider under 18 USC 2703.

[REDACTED] (S)

3. **Voluntary Disclosures by ISPs** - Section 212 of the Act permits communications providers to voluntarily disclose the contents of communications to protect life or limb or their rights or property.

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[REDACTED] (S) b7E

4. **Information Sharing** - Sections 203(b) and (d) of the Act permit the sharing of information between criminal and intelligence investigations.

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[REDACTED] (S)

FISA coverage on a close associate provided invaluable information on the first subject, in particular the timing of his arrest, as he was in the process of leaving the country on extremely short notice (the arrest was made at the airport.) The IT subject ultimately pleaded guilty to a White Collar Criminal charge, was denaturalized, and deported out of the country. [REDACTED] can provide a more detailed, classified, case review upon request.)

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5. **Intercepting Communications of Computer Trespassers** - Section 217 of the Act permits a computer owner/operator to provide consent for law enforcement to monitor the activities of a computer trespasser.

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[REDACTED] (S)

6. **Expanded Title III Predicates** - Sections 201 and 202 of the Act permit the use of court authorized electronic surveillance (i.e. a Title III) in investigations involving chemical weapons (18 USC 229), terrorism (18 USC 2332a, 2332b, 2332d, 2339A and 2339B) or computer fraud and abuse (18 USC 1030.)

[REDACTED] (S)

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C13647, 03/17/2004

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7. **Roving FISA Surveillance** - Section 206 of the Act permits roving surveillance where the target is attempting to thwart electronic surveillance.

[REDACTED] (S)
[REDACTED] However, [REDACTED] anticipates the increased use of this important authority to combat the increasingly sophisticated trade craft employed by IT and FCI subjects.

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8. **New Standard for FISA Pen/Trap** - Section 214 of the Act authorizes a FISA Order for a pen register or trap/trace based upon the standard that such is relevant to the investigation.

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[REDACTED] (S)
9. **Changes to the "Primary Purpose" Standard for FISA Court Orders** - Section 218 of the Act authorizes the issuance of a FISA Court Order where foreign intelligence gathering is a "significant purpose" rather than the "primary purpose" for the Order.

This provision along with the information sharing provisions are the cornerstones of the PATRIOT ACT. [REDACTED] has had great success in the sharing of FISA information to assist members of the Intelligence Community (IC) as well as other criminal agencies, and the US Attorneys Office. In one particularly noteworthy example, the subject of a two year long FISA was subsequently arrested on a weapons charge stemming from an incident that happened prior to 9/11/01. In preparation for the trial, [REDACTED] coordinated closely with the AUSA's office to identify potentially useful FISA cuts in preparation for a trial. While the subject ultimately pled guilty prior to trial, significant time and resources were committed to reviewing the FISA cuts in preparation and coordinating a unified strategy between the [REDACTED] the AUSA's office and the arresting agency. [REDACTED] can provide a more detailed, classified, case review upon request.)

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10. **New Standard for Business Records Under FISA** - Section 215 of the Act permits the issuance of a FISA Court Order for record production where the information is relevant to an investigation.

[REDACTED] (S)
[REDACTED] Again, however, [REDACTED] considers this authority to be extremely valuable, in particular when the use of a National Security Letter (NSL) is not authorized or appropriate.

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To: General Counsel From:
Re: 66F-HQ-C13642, 03/17/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and Clear.

♦♦

~~SECRET~~

~~SECRET~~

DATE: 08-29-2005
CLASSIFIED BY 65179 DMH/KJ/US-cv-0845
REASON: 1.4 (c)
DECLASSIFY ON: 08-29-2030

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/18/2004

To: General Counsel

Attn: Investigative Law Unit

From:

Squad 1

Contact: CDC

Approved By:

Drafted By:

Case ID #: 66F-HQ-C1364260 (None)
66F-HQ-C1384970 (None)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To provide a brief narrative summarizing benefits
[redacted] has received from specified provisions of USA
PATRIOT Act.

Reference: 66F-HQ-C1364260 Serial 5
66F-HQ-C1384970 Serial 7564

Details: Field offices were requested to provide OGC with
statistics, good examples or anecdotes, or at a minimum, a
brief narrative summarizing the benefits the office has
received from the specified sunset provisions of the USA
PATRIOT Act. Listed below are the specific provisions
scheduled to sunset with brief commentary regarding use by the
[redacted]

Voice Mail - Section 209:

Nationwide Search Warrants for E-Mail and Associated Records -
Section 220:

Voluntary Disclosures - Section 212:

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/18/2004

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Information Sharing - Section 203(b) and (d):

[REDACTED] (S)
[REDACTED] Some but not all specific case examples would include the following:

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1) In 315Q-56983, information was obtained from a criminal case CW regarding the subject of a foreign intelligence investigation who was suspected of planning a terrorist act. Sharing of intelligence information developed regarding the subject led to the interception, arrest and anticipated deportation of the subject.

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2) [REDACTED] intelligence information was shared

b7A

3) In [REDACTED] pen register information obtained through a traditional criminal court Order directly supported a FISA application which has been prepared and forwarded to FBIHQ.

b7A

4) In [REDACTED] an intelligence investigation, information was developed regarding [REDACTED]

[REDACTED] This information was provided to [REDACTED]

b7A

Expanded Predicates for Title III - Sections 201 and 202:-

[REDACTED] (S)
Roving FISA Surveillance - Section 206:

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[REDACTED] (S)
New Standard for FISA Pen/Trap - Section 214:

[REDACTED] (S)
Changes to "Primary Purpose" Standard for FISA - Section 218:

[REDACTED] (S)
[REDACTED] in obtaining these applications information obtained through traditional criminal investigative methods has been shared and incorporated into the application. The FISA application which is pending before OIPR was developed through file number 315N-6807.

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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New Standard for Business Records under EISA - Section 215.

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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b7E

LEAD(s) :

Set Lead 1: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and disseminate as appropriate.

♦♦

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/19/2004

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To: General Counsel

Attn:

ILU, Rm. 7326

From:

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Contact:

b7E

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Approved By:

Drafted By:

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Case ID #: 66F-HQ-C1364260-30
66F-HQ-C1384970-8162

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: This EC contains a couple of anecdotes regarding the benefits conferred on [redacted] investigations by the Patriot Act.

Reference: 66F-HQ-C1364260 Serial 5

Details: While attempting to gather information for a full response to the referenced serial, [redacted] could not locate reliable data on the impact that lapsing Patriot Act provisions have had on [redacted] investigations, but [redacted] is happy to report that Agents provided a couple of interesting anecdotes.

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[redacted] This vital information led to the issuance of 8 indictments and the seizure of numerous bank and financial accounts totaling nearly \$600,000.00.

[redacted] Since the enactment of Section 504 of the Patriot Act, Agents operating FISAs have been able to use intelligence generated therefrom to assist criminal Agents and criminal AUSAs in prosecuting the [redacted] case. Foreign intelligence information, e.g. travel information, collected through use of FISC-authorized electronic surveillance in the

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To: General Counsel From: [redacted]
Re: 66F-HQ-C13642 03/19/2004

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cases involving [redacted]
[redacted], and [redacted]
[redacted] has aided the criminal investigations and
subsequent prosecutions of these subjects.

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If [redacted] learns of other relevant anecdotes, it will
provide them to the Investigative Law Unit immediately.

♦♦

~~SECRET~~

DATE: 08-29-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (c)
DECLASSIFY ON: 08-29-2030

(Rev. 01-31-2003)

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WHERE SHOWN OTHERWISE

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/19/2004

To: ✓ General Counsel

Attn: ✓ Investigative Law Unit

b6

Room 7326

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From:

Squad 1 - Chief Division Counsel (CDC)

Contact:

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Approved By:

b6

Drafted By:

b7C

Case ID #: (U) 66F-HQ-C1364260 (Pending) -31
(U) (Pending) -211

b7A

Title: (U) USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: (U) This communication reports examples of the
use of portions of the USA Patriot Act
which will sunset in 2005.

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~~(S)~~ (U)

~~Derived From : G-3~~
~~Declassify On: X1~~

Administrative: (U) Reference is made to the 02/27/2004
electronic communication (or EC) of the Office of the General
Counsel.

Details: (U) The following are examples of the
use of portions of the USA Patriot Act which will
sunset in 2005:

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(U) Nationwide Search Warrants for Email and
Associated Records

(S)

(U) Information Sharing

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To: General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/19/2004

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(S) The referenced EC requested specific examples relating to Sections 203(b) and (d) of the USA Patriot Act. [REDACTED] (S)

[REDACTED] But the following is offered:

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[REDACTED] Relevant information developed in the criminal investigations was shared with those in charge of the international terrorism investigations, and vice versa. (S)

(U) (S) The [REDACTED] Joint Terrorism Task Force (JTTF) established liaison with the U.S. Department of Education and the IRS - Treasury Inspector General for Tax Administration.

(U) (S) The Department of Education offered to share information regarding foreign students under the provisions of the Patriot Act, provided that the requesting JTTF member attests that terrorism may be involved. Information available includes extensive background data concerning students who have requested grants. To date, two requests have been submitted to the Department of Education. These requests are pending. b2 b7E

(U) (S) The [REDACTED] JTTF received a similar offer from IRS - Treasury Inspector General for Tax Administration to share information regarding potential terrorist subjects. Information includes a query of a threat database maintained regarding individuals who have expressed anti-government sentiment, specifically tax protesters. Information to be shared is limited to whether an individual posed a possible threat, or did not pay taxes based on anti-government beliefs. This information is most useful regarding domestic terrorism cases. To date, two requests were been submitted, but both yielded negative results.

(U) Roving FISA Surveillance

X

(S)

(U) New Standard for FISA Pen/Trap

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To: General Counsel From:
Re: (U) 66F-HQ-C1364260, 03/19/2004

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X

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(S) b2
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(U) Changes to "Primary Purpose" Standard
for FISA

X

(S)

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To: General Counsel From:
Re: (U) 66F-HQ-C1364260, 03/19/2004

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LEAD(s):

Set Lead 1: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) For information and discretionary action.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/19/2004

To: General Counsel

Attn:

Investigative Law Unit
Room 7326

b6

International Operations

Attn:

SSA [REDACTED] IOU-IIb7C

b2

From:

b7E

Contact:

Approved By:

Drafted By:

H:mhr

ALL INFORMATION CONTAINED
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b7C

Case ID #: 66F-HQ-C1364260 (Pending) 32

Title: USA PATRIOT ACT
SUNSET PROVISIONS

DATE: 08-15-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (d)
DECLASSIFY ON: 08-15-2030

Synopsis: To provide examples of use of Patriot Act provisions.
Lead covered at [REDACTED]

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Reference: 66F-HQ-C1364260 Serial 5

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Details: [REDACTED] has utilized provisions of the Patriot Act
as it relates to e-mail communications [REDACTED]

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(S) b7E

[REDACTED] These cases involved the utilization of Hotmail and/or
Yahoo accounts by Subjects for the purpose of communicating with
victims or the families of victims.

[REDACTED] [REDACTED] contacted the U.S.
Department of Justice (DOJ) Office of International Affairs (OIA)
and Computer Crime & Intellectual Property Section (CCIPS). [REDACTED]

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[REDACTED] 2703(f) preservation letters were submitted,
subsequently 2703(d) letters were drafted and submitted by DOJ.

b7E

[REDACTED] involved the utilization of Hotmail e-mail for
communication between a fugitive in an [REDACTED] homicide
investigation. [REDACTED] both Hotmail and Yahoo were
utilized in an attempt to extort funds from the Argentine
subsidiary of a large United States accounting and financial
services firm.

[REDACTED] a kidnaping was resolved, and
a victim rescued, as a result of the voluntary release of non-
content Hotmail e-mail data by MSN. In this investigation, MSN

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079 MARK A. EC

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To: General Counsel from: [redacted]
Re: 66F-HQ-C1364260, 03/19/2004

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[redacted] based attorneys worked in conjunction with [redacted]
[redacted]

(S)

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To: General Couns From:
Re: 66F-HQ-C1364260, 03/19/2004

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LEAD(s) :

Set Lead 1: (Info)

ALL RECEIVING OFFICES

For information.

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/18/2004

To: General Counsel

Attn: ILL. Room 7326

From:

Contact:

Approved By:

Drafted By:

Case ID #: 66F-HQ-C1364260-33 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: Response to OGC request for information on Patriot Act utilization.

Reference: 66F-HQ-C1364260 Serial 5

Details: The [redacted] has had the opportunity to utilize various Patriot Act provisions, most frequently, by taking advantage of the new legal standards related to FISA techniques.

The new information sharing capabilities has allowed the [redacted] to share important information with the intelligence community, most notably in the following cases:

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DATE: 09-12-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (C)
DECLASSIFY ON: 09-12-2030

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05-CV-0845

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(S) b7C

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AMS07803.EC

~~SECRET~~

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260 03/18/2004

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[REDACTED] (S) b1

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The Patriot Act has also allowed information sharing
between the criminal investigation and intelligence investigation

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[REDACTED] (S)

A nationwide search warrant for electronic
communication records was utilized in the [REDACTED] (S)
investigation, providing for more efficient use of investigative
resources.

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TO: General Counsel From:
Re: 66F-HQ-C1364260 03/18/2004

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b7E

LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and clear.

♦♦

~~SECRET~~

~~SECRET~~

(Rev. 01-31-2003)

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

DATE: 08-15-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (c,d)
DECLASSIFY ON: 08-15-2030

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/19/2004

To: General Counsel

Attn: [REDACTED]

ILU

Rm. 7326

From: [REDACTED]

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Squad #1

Contact: [REDACTED]

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Approved By: [REDACTED]

Drafted By: [REDACTED]

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Case ID #: (U) 66F-HQ-C1364260 (Pending)
(U) 66F-HQ-C1384970 (Pending)

8/6/07

Title: USA PATRIOT ACT
SUNSET PROVISIONS

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Synopsis: (U) The [REDACTED] is providing examples of utilization of USA Patriot Act provisions.

(SECRET) ~~Derived From : Multiple Sources~~
~~See Classification Authority Reference~~
~~Section.~~
~~Declassify On: X1~~

Classification Authority Reference: (S) - (U)

Details: (U) Reference FBIHQ (ILU,OGC) EC to All Field Offices dated 02/27/2004.

(U) The referenced EC requested that each field office provide statistics, examples or anecdotes, or a brief narrative summarizing the benefits which the office has received from the use of specified sunset provisions of the USA Patriot Act.

(U) Accordingly, the two appropriate [REDACTED] squads dealing with FCI/DT/IT and Cybercrime were contacted and the following information was provided:

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(U)

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To: General Counsel From:
Re: (U) 66F-HQ-C1364260, 03/19/2004

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(U) The FCI/DT/IT squad had one example each of its utilization of the Information Sharing provision and the Changes to the Primary Purpose Standard for FISA. The following are the examples provided, along with a comment regarding the New Standard for Business Records under FISA:

(U) I. Information Sharing

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~~(S)~~

(S)

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To: General Counsel From:
Re: (U) 66F-HQ-C1364260, 03/19/2004

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(U) II. Primary Purpose Clause

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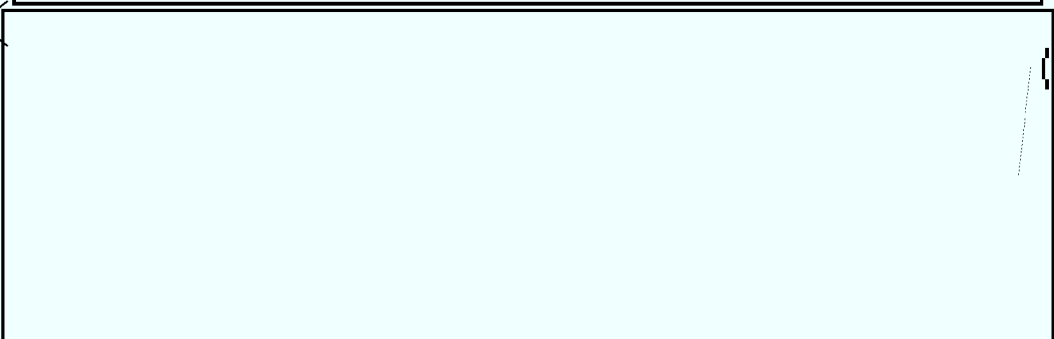
~~(S)~~



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~~SECRET~~

To: General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/19/2004

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[REDACTED]

(S)

(U) III. Commentary relating to the New Standard for
Business Records under FISA

(U)

[REDACTED]

[REDACTED]

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/19/2004

To: General Counsel

ATTN: AGC [REDACTED]

Investigative Law Unit

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b7C

From: [REDACTED]

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Sqd 2

Contact: CDC [REDACTED]

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Approved By: [REDACTED] *PK*

Drafted By: [REDACTED]

Case ID #: 66F-HQ-C1364260-35 (Pending)

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Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To provide Investigative Law Unit with examples of usage of certain sunsetted provisions of the USA Patriot Act by the [REDACTED]

Details: Per the request contained in the OGC, ILU EC dated 2/27/2004, captioned as above, the following is a synopsis of instances where certain provisions of the USA Patriot Act, subject to being sunsetted on 12/31/2005, have been utilized by [REDACTED]

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Nationwide Search Warrants for E-mail and Associated Records - Section 220 of the Act enabled courts with jurisdiction over an investigation to issue a search warrant with nationwide jurisdiction to compel the production of information held by a service provider, such as unopened e-mail. Previously, the search warrant had to be issued by a court in the district where the service provider was located. See 18 U.S.C. § 2703.

305C [REDACTED] 42731 Nationwide search warrant for AOL.

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On April 3, 2003, an FBI agent from [REDACTED] had signed onto America Online (AOL) in an undercover capacity. The agent had entered the AOL chat room [REDACTED] and encountered an individual using the AOL screen name [REDACTED]. [REDACTED] indicated that he was running a list management program in the chat room and advised that anyone wishing to join the list should type the words "list me." The Buffalo agent typed "list me" and shortly thereafter received an electronic mail (e-mail) message from [REDACTED]. Embedded in the e-mail were nine images that depicted children engaged in sexual activity. The minors observed in these specific images had been previously identified through the FBI's Child Victim Identification Program. The agent subsequently initiated contact with [REDACTED] who then sent three additional e-mails to the agent. Two of the e-mails had an attached file that was a video clip of child pornography. The remaining e-mail again contained embedded images of child pornography.

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To: General Counsel From: [redacted]
Re: 66F-HQ-C1364260 03/19/2004

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Based on additional investigation [redacted] identified [redacted] as [redacted] a resident of [redacted] information was provided to [redacted] which continued the investigation of [redacted] A search warrant was eventually issued for [redacted] residence, at which time computer and other electronic evidence were seized. In an interview conducted during that search [redacted] admitted that he had engaged in the distribution and receipt of child pornography. Forensic examination of the electronic evidence supported the investigation; however, [redacted] sought to identify any additional evidence that [redacted] may have retained on AOL's server, in e-mail, etc. As such [redacted] has obtained a search warrant for [redacted] AOL account and intends to serve it during the week of March 15, 2004. It is anticipated that the warrant to be served upon AOL, located in Dulles, Virginia, will allow [redacted] to determine whether additional evidence regarding the distribution, receipt, or possession of child pornography resides in [redacted] account. In addition, [redacted] may be able to identify additional subjects, with whom [redacted] may have exchanged such images, or minors, with whom [redacted] may have been communicating.

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[redacted] Nationwide search warrants issued as follows:
[redacted] to Hotmail and Verisign
[redacted] to Catalog.com, Yahoo!, Hotmail, and Verisign

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An international group of "carders" (individuals who use and trade stolen credit card information) was operating via the Internet using Internet Relay Chat channels and various fraudulently purchased web sites. The carders needed individuals within the United States to provide "drop" sites (addresses within the country of purchase to which fraudulently purchased goods could be delivered for shipment to locations outside of that country).

Nationwide search warrants were used to obtain e-mail communications among the carders. Search warrants issued on [redacted] provided information about the fraudulent activities of the group including a drop site in [redacted] In addition, e-mail addresses for other members of the group were discovered. Nationwide search warrants were then issued on [redacted] to obtain information from the newly discovered e-mail addresses as well as updating the information from the previously known addresses.

The content produced by the e-mail providers in response to the Nationwide search warrants resulted in the indictment of the individual operating the drop site located in [redacted] The Nationwide search warrants reduced the time needed to have the searches executed and significantly reduced the number of FBI, U.S. Attorney's Office, and Judicial personnel required to complete the search warrant process.

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Intercepting Communications of Computer Trespassers - Section 217 of the Act clarified an ambiguity in the law by explicitly providing victims of computer attacks the ability to invite law enforcement into a protected computer to monitor the computer trespasser's communications. Before monitoring can occur, however, four requirements must be met. First, consent from the owner or operator of the protected computer must be obtained. Second, law enforcement must be acting pursuant to an ongoing investigation. Both criminal and intelligence investigations qualify, but the authority to intercept ceases at the conclusion of the investigation. Third, law enforcement must have reasonable grounds to believe that the contents of the communication to be intercepted will be relevant to the ongoing investigation. And fourth, investigators must only intercept the communications sent or received by trespassers. Thus, this

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/19/2004

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section would only apply where the configuration of the computer system allows the interception of communications to and from the trespasser, and not the interception of non-consenting authorized users. Additionally, based on the definition of a "computer trespasser," communications of users who have a contractual relationship with the computer owner may not be monitored, even if their use is in violation of their contract terms (i.e. spammers). See 18 U.S.C. § 1030(e)(2); 18 U.S.C. § 2510 (20) & (21); 18 U.S.C. § 2511(2)(i).

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[REDACTED] Communications of Computer Trespasser Intercepted

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An international group of "carders" (individuals who use and trade stolen credit card information) was operating via the Internet using Internet Relay Chat channels and various fraudulently purchased web sites. The carders would use proxy servers and free e-mail accounts to conceal their identities on the Internet. Proxy servers change an Internet users origin IP address to that of the proxy server such that only the proxy server knows the true point of origin. Free e-mail accounts can be obtained without providing true identification such as names, addresses, credit card numbers, etc. One such proxy server was located [REDACTED] and the

[REDACTED] As a result, [REDACTED] With consent from the server's owners, all Internet traffic that passed through the proxy port was intercepted in accordance with the above Patriot Act provision.

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Prior to interception, two e-mail accounts were known for the main subject. The interception led to the discovery of three additional e-mail accounts used by the main subject. The only connection between the e-mail accounts was that the subject logged onto all of the accounts around the same time on numerous occasions. One of the newly discovered e-mail accounts provided a real name and physical address information for an individual in Kuwait believed to be the main subject. The other accounts provided additional leads that would not have been possible without the interception of trespasser communications (e.g. one of the other accounts was commonly used by the main subject in additional frauds making it simpler to identify the fraud and connect them to the subject).

Any questions concerning these cases may be directed to SSA [REDACTED]
Sqd. 10 (Cyber) at [REDACTED] or SA [REDACTED]

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260 03/19/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

For information and possible use by ILU in support of continuing usage of certain provisions of the USA Patriot Act beyond 12/31/2005.

♦♦

~~SECRET~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(Rev. 01-31-2003)

~~SECRET~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/16/2004

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To: Office of the General Counsel

Attn: [REDACTED]
Investigative Law Unit
Room 7326

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From: [REDACTED]

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C6/JTTF

Contact: SA [REDACTED]

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Approved By: [REDACTED]

DATE: 09-12-2005

b7C

CLASSIFIED BY 65179 DMH/KJ

REASON: 1.4 (C)

DECLASSIFY ON: 09-12-2030

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Drafted By: [REDACTED]

05-CV-0845

b7C

Case ID #: (U) 66F-HQ-C1364260 (Pending)
(U) 66F-HQ-C1384970 (Pending)

Title: (U) USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: (U) Narrative of the benefits the [REDACTED]
JTTF has received from certain provisions of the Patriot Act.

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~~(S)~~ (U)

~~Derived From: G-3~~

~~Declassify On: X1~~

Reference: (U) 66F-HQ-C1364260 Serial 58

Details: ~~(S)~~ (U) Per the referenced communication, the [REDACTED]
[REDACTED] JTTF would cite two significant investigations to support
the renewal of the provisions of the Patriot Act that are
scheduled to sunset on December 31, 2005.

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To: Office of the General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/16/2004

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prior to the submission of the request. The new standard under Section 214 of the Patriot Act of "relevant to an ongoing investigation to protect against terrorism" could be established with the available evidence and the FISA request was approved within a few months.

(U) ~~(S)~~ Based in part on the data obtained from the pen registers, the case agent was able to establish that the subjects were in contact with the subjects of other FBI terrorism investigations.

(U) ~~(S)~~ This new information, combined with other information, provided a basis for a FISA request to authorize the interception of communications on the subject's cellular telephone. This request is pending approval. This investigation has been transferred to the Miami Division because the subject moved to Florida.

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(U) ~~(S)~~ Further, it is anticipated that these records will support additional allegations into individuals who have previously been in control of money deposited into that account and may support a FISA request to overhear communications by the individual currently in control of those funds.

(U) ~~(S)~~ The information sharing provisions of the Patriot Act are now so routine for task force members that it

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To: Office of the General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/16/2004

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is almost unthinkable that these crucial tools would no longer be available. [REDACTED]

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(U) ~~(S)~~ As one [REDACTED] JTTF member stated, "because of the Patriot Act, one investigator can now pick up the phone and have information from ICE, the Postal Service, or the State Department at his fingertips." "It has created one-stop shopping" that has enhanced the speed at which we can recognize patterns of activity and can focus more quickly on a subject. Another investigator explained that he no longer wastes time trying to convince companies to provide information. They now comply immediately with requests because the Patriot Act obligates them to respond. "Investigations are no longer thwarted because of the timeliness of the response to the request for information."

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(U) If requested, this Division will provide additional examples of how the passage of the Patriot Act has increased the ability of [REDACTED] investigators to obtain useful information into individuals and groups associated with terrorism.

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To: Office of the General Counsel From:
Re: (U) 66F-HQ-C1364260, 03/16/2004

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LEAD(s) :

Set Lead 1: (Info)

ALL RECEIVING OFFICES

(U) Read and clear

♦♦

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DATE: 08-29-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (c)
DECLASSIFY ON: 08-29-2030

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/18/2004

To: General Counsel

Attn: Investigative Law Unit

From: [REDACTED]

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Squad 1

Contact: Acting OGC [REDACTED]

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Approved By: [REDACTED]

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Drafted By: [REDACTED]

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Case ID #: 66F-HQ-C1364260

(Pending)

38

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(Pending)

8266

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: [REDACTED] response to USA Patriot Act survey
regarding use of the particular provisions scheduled to expire
on December 31, 2005.

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Reference: 66F-HQ-1364260 Serial 5

Details: After a review of whether any of [REDACTED]
investigations have utilized the enhanced investigative tools
which are scheduled to expire as provided by the Patriot Act
("Act") [REDACTED]

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[REDACTED] has used other investigative tools created by
provisions of the Act and these tools have had a crucial
impact on [REDACTED] investigations. The greatest positive
impact is derived from the ease with which [REDACTED] can now
issue National Security Letters ("NSLs") due to the reduced
signature authority of NSLs and the relevance standard.
Before passage of the Act, NSLs were less frequently used
because of the lengthy process required for issuance of NSLs.
OGC has access to the control file that would provide an
accurate number of NSLs issued since the passage of the Act.
To supplement that figure, [REDACTED] polled the majority of the
agents who have used NSLs on the number of NSLs used and the
importance that obtaining such information in a timely manner
was to their investigations. Based on that effort, it appears

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/18/2004

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that [REDACTED] has issued well in excess of 100 NSLs since the passage of the Act. More importantly, the information obtained from these NSLs has represented the full range of information available to include financial records, E-mail account information, telephone toll records, and consumer credit reports. Invariably, the agents replied that the information was crucial to their investigations to the extent that the ability to succeed in the investigation hinged upon the ability to obtain such information in a timely manner.

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Many of the cases in which the NSLs have produced positive impact are classified matters; accordingly, specific anecdotal examples will not be provided in this response. The Counter Terrorism squad supervisor has advised, in general terms, that the matters have concerned potential threats wherein the quick access to information from NSLs played a critical role in accessing the credibility of the potential threats. The Foreign Counter Intelligence squad has likewise show a dramatic increase in its utilization of NSLs and expressed the value that NSLs have provided to its efforts.

Furthermore, [REDACTED] anticipates that the new ability to obtain temporarily assigned network addresses by subpoena will play a critical role in its newly established Cyber Squad in intrusion cases. Thus far, that information has been already obtained by other divisions involved in the same investigations.

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[REDACTED] will continue to educate its agents on the tools created by the Act, including the provisions scheduled to expire. If the investigative tools derived from the provisions with relevant expiration dates are employed in [REDACTED] prior to December 31, 2005, [REDACTED] will amend this response.

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To: General Counsel From:
Re: 66F-HQ-C1364260, 03/18/2004

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LEAD(s) :

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and clear.

♦♦

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(Rev. 01-31-2003)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

FEDERAL BUREAU OF INVESTIGATION

05-cv-0845

Precedence: ROUTINE

Date: 03/17/2004

To: General Counsel

Attn: [REDACTED]
Investigative Law Unit
Room 7326

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From: [REDACTED]

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Squad A-1

Contact: CDC [REDACTED]

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Approved By: [REDACTED] *ymk*

Drafted By: [REDACTED] *AK*

DATE: 09-12-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (C)
DECLASSIFY ON: 09-12-2030

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Case ID #: 66F-HQ-C1364260 (Pending) - 39
[REDACTED] (Pending) - 8275
66F-[REDACTED] C117669 (Pending) - 973

05-CV-0845

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Title: USA PATRIOT ACT
SUNSET PROVISIONS

b7A

Synopsis: To provide information summarizing [REDACTED] b2
reliance on several authorities implemented by the USA Patriot Act b7E
(the Act) which are subject to sunset provisions.

Details: As requested in an electronic communication (EC) dated
2/27/2004 to All Field Offices from the Office of the General Counsel,
offices were requested to provide the Investigative Law Unit (ILU)
with information, examples and/or statistics demonstrating the
benefits the division has received from certain provisions of the
Patriot Act.

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Writer conducted a poll of all supervisors within the
division seeking information described above. Based upon responses b7E
the poll, [REDACTED] provides the following information:

1. Voice Mail - Section 209 of the Act permits law enforcement
to obtain a search warrant or court order for voice mail messages
maintained by a communications provider under 18 USC 2510 or 2703.

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[REDACTED] (S)

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2. Nationwide Search Warrants for e-mail - Section 220 of the
Act permits the issuance of search warrants with nationwide b7E
jurisdiction to an electronic communications service provider under 18
USC 2703.

[REDACTED] (S)

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~~SECRET~~

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260 03/17/2004

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3. Voluntary Disclosures by ISPs - Section 212 of the Act permits communications providers to voluntarily disclose the contents of communications to protect life or limb or their rights or property.

[REDACTED] b1
which involved a domestic terrorism investigation arising from an arson allegedly perpetrated by a radical animal rights group. (S) b2 b7E

4. Information Sharing - Sections 203(b) and (d) of the Act permit the sharing of information between criminal and intelligence investigations. (S)

b1 [REDACTED]
b2 There is an overwhelmingly positive response among both criminal and
b7E intelligence investigators to this section of the Act. The examples of information sharing are too numerous to describe in detail, however, two large scale investigations have benefitted immeasurably, specifically:

a. Example A is a criminal case which involves two charitable organizations found to have fund-raising ties to terrorist groups. The matter began as an intelligence investigation, but information was shared between criminal and intelligence investigators and will likely lead to criminal indictments and substantial forfeiture.

b. Example B is a criminal investigation into a Middle East terrorist group, with a parallel intelligence investigation into specific members of the group. Through information sharing and the ability of the criminal and intelligence investigators to work together, FISA interceptions and search warrants have been used to provide extremely valuable information for both the criminal and intelligence investigators.

5. Intercepting Communications of Computer Trespassers - Section 217 of the Act permits a computer owner/operator to provide consent for law enforcement to monitor the activities of a computer trespasser.

[REDACTED] b1
(S) b2
6. Expanded Title III Predicates - Sections 201 and 202 of the Act permit the use of court authorized electronic surveillance in b7E investigations involving chemical weapons, terrorism or computer fraud and abuse.

[REDACTED] (S) b1

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260 03/17/2004

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7. Roving FISA Surveillance - Section 206 of the Act permits roving surveillance where the target is attempting to thwart electronic surveillance.

[REDACTED] (S)
[REDACTED] did assist another field office in its utilization of a roving FISA. Agents from the [REDACTED] Division monitored the roving FISA when the subject arrived in [REDACTED] and while the subject stayed in an area hotel.

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8. New Standard for FISA Pen/Trap - Section 214 of the Act authorized a FISA order for a pen register or trap and trace device, based upon the standard that such is relevant to the investigation.

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9. Changes to the "Primary Purpose" standard for FISA Court Orders - Section 218 of the Act authorized the issuance of a FISA Court order where foreign intelligence gathering is a "significant purpose" rather than the "primary purpose."

[REDACTED] (S)
[REDACTED] as sharing of information between intelligence and criminal agents was prohibited prior to the Patriot Act. See Examples 4a and b above.

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10. New Standard for Business Records Under FISA - Section 215 of the Act permits the issuance of a FISA Court Order for records production where the information is relevant to an investigation.

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To: General Counsel From:
Re: 66F-HQ-C1364260 03/17/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

To provide information as requested by ILU. Read and clear.

♦♦

~~SECRET~~

~~SECRET~~

DATE: 08-29-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (c)
DECLASSIFY ON: 08-29-2030

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/23/2004

To: Office of the General Counsel

Attn: [REDACTED]
Investigative Law Unit
Room 7326

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From: [REDACTED]

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L-1

Contact: ADC [REDACTED]

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Approved By: [REDACTED]

b6

Drafted By: [REDACTED]

b7C

Case ID #: 66F-HO-C1364260 (Pending)
[REDACTED] (Pending)

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Title: USA PATRIOT ACT
SUNSET PROVISIONS

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Synopsis: To provide the Investigative Law Unit, Office of the General Counsel (OGC) the information requested via their EC dated 1/23/04 regarding captioned matter.

Details: Pursuant to the above referenced request a canvass of all [REDACTED] squads was conducted to obtain statistics, good example and/or narratives summarizing the benefits [REDACTED] has received from the referenced sunset provisions. The result are as follows:

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Information Sharing- Section 203(b): This section of the sunset provision was of great benefit to criminal and intelligence matters being investigated. Having a hard wall again between intelligence and criminal matters would greatly inhibit law enforcement ability to conduct long term terrorism investigations, which often falls into both categories.

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[REDACTED] with hotmail.com
in regards to 315N matter. This act was also used in the same case to obtain information from yahoo.com, with unsuccessful results.

(S)

New Standard for FISA Pen/Trap- Section 214: [REDACTED]

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[REDACTED] in two [REDACTED] 315N matter.

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66F-HO-C1364260-40

~~SECRET~~

To: Office of the General Counsel From: Miami
Re: 66F-HQ-C136426 03/23/2004

218:

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To date, the other sunset provisions of the Patriot Act have not been used in the [redacted] lead is considered covered.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: DEADLINE 03/19/2004

Date: 03/19/2004

To: General Counsel

Attn: [REDACTED]

Room 7326

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From: [REDACTED]

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Office of Division Counsel (ODC)

b7E

Approved By: [REDACTED]

Drafted By: [REDACTED]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 09-09-2005 BY 65179 DMH/KJ

Case ID #: 66F-HQ-C1364260 (Pending) -41
66F-[REDACTED]-C1384970 (Pending)
66-[REDACTED]-5618

05-CV-0845

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Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To advise the Office of the General Counsel (OGC) of provisions of the Patriot Act used by [REDACTED] that are set to expire on 12/31/2005.

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Reference: 66F-HQ-C1364260 Serial 5
66F-HQ-C1384970 Serial 7564

Details: Referenced Bureau communication requested field offices to report the usage of provisions of the USA Patriot Act set to expire on 12/31/2005. [REDACTED] has used several of these provisions to its investigative advantage in general criminal and counterintelligence cases, but has made the most use of these provisions in counterterrorism cases. Initially, however, [REDACTED] reports that Agents on several occasions have requested to make appropriate use of important tools legislated in the Patriot Act and each request has been denied by the Department of Justice (DOJ), Office of Intelligence Policy and Review (OIPR). Specifically, [REDACTED] has requested OIPR approval for "roving FISA surveillance" under Section 206 regarding known Intelligence Officers (IOs) who employ counterintelligence techniques to avoid detection. All of [REDACTED] requests have been denied. In addition, WFO has requested the use of the new standard to obtain business records under FISA and has been denied on each occasion. [REDACTED] notes that the same records may be obtained in criminal cases by

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To: General Counsel From: [redacted]
Re: 66F-HQ-C136426 03/19/2004

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use of subpoena, yet the legislated tool in counterintelligence and counterterrorism cases goes unused.¹

In regard to Section 220 and the ability to obtain nation-wide search warrants, [redacted] has benefitted not only in regard to the efficiency in which it can conduct its own investigations [redacted], but also in regard to the personnel resources it does not have to expend in obtaining search warrants to be served in America On Line (AOL). In the past [redacted] had expended significant resources in regard to the liaison with the U.S. Attorney's Office in the Eastern District of Virginia in drafting, and applying for AOL search warrants, as well as the service of these warrants.

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[redacted] has used the authority in Section 212 of the Patriot Act on occasions when the Assistant Director or the Special Agent in Charge has found that information developed revealed an emergency involving an immediate risk of death or serious injury. In a number of cases, this provision allowed [redacted] to obtain the content of e-mail in response to threats (usually over the Internet or e-mail), where the use of other more routine provisions would have been much less timely or would have required specific approval by the Attorney General. [redacted] used this provision to obtain access to e-mails wherein members of a known terrorist group had e-mail traffic involving a discussed attack (315S [redacted] 224164). The provision was also used in investigating a threat to a high ranking foreign official.

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The new information sharing procedures of Section 203(b) & (d) and the changes to the "primary purpose" standard for FISA have significantly changed the way [redacted] investigates terrorism cases for both intelligence value and for criminal prosecution. [redacted] has participated in numerous investigations in the last two years that have involved the participation of investigators in foreign countries, criminal investigative techniques, Assistant United States Attorneys and the use of FISA. On several occasions, [redacted] has obtained the express authorization of the Attorney General to use FISA information in criminal proceedings. Case Agents and others have commented that these investigations would never have operated as smoothly prior to these Patriot Act provisions, and in some cases, the matters would have been almost impossible to complete. These changes were most evident in [redacted] 3150-[redacted] 215590, and in the

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[redacted]

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/19/2004

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"Virginia Jihad" series of cases. In addition, the "significant purpose" standard has allowed the employment of the FISA technique on indicted individuals, wherein significant foreign intelligence has been developed. Such use of this technique would not have been practically employed in the past under DOJ's reading of the "primary purpose" standard.

Section 214 of the Patriot Act has enabled Agents conducting CI/CT investigations to obtain pen register data on the subjects of their investigations in a way that is much more like the way their counterparts on the criminal side obtain such authorization. However, significant resources could still be saved by streamlining the process even further, by giving FBI attorneys access to the FISA judges and by creating positions for FISA magistrates. Pen register/trap trace is an important investigative tool and could be used to a greater extent if the process is made easier. It has provided useful and invaluable information (65A [REDACTED] 220066) regarding previously unknown contacts on case subjects that may have gone unknown before when there was a requirement to identify the individual as an agent of a foreign power.

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[REDACTED] believes that all of these provisions, if utilized to their fullest intended extent, are useful tools and should be extended. Further, OGC and Congressional Affairs should continue to seek further legislation to assist in investigative efforts.

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/19/2004

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LEAD(s) :

Set Lead 1: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

Will include [REDACTED] use of the Patriot Act in
justification to remove expiration dates from the various
described provisions.

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~~SECRET~~

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/24/2004

To: General Counsel

Attn: Investigative Law Unit, FBIHQ
Room 7326, [REDACTED]

From: [REDACTED]

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Chief Division Counsel

Contact: [REDACTED]

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Approved By: [REDACTED]

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

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Drafted By: [REDACTED]

DATE: 09-12-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (C)
DECLASSIFY ON: 09-12-2030

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Case ID #: 66F-HQ-C1364260-44 (Pending)
1A [REDACTED] 231

05-CV-0845

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Title: USA PATRIOT ACT SUNSET
PROVISIONS

Synopsis: [REDACTED] summary of the benefits the office
has received from Patriot Act provisions which will sunset or
expire on December 31, 2005, unless Congress acts otherwise.

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Details: The [REDACTED] has canvassed individuals who have
used some of the Patriot Act investigative tools outlined in
serial 5, dated February 27, 2004, in file 66F-HQ-C1364260. The
following summary includes only those tools used or actively
considered by the Division.

Roving FISA Surveillance-Section 206

[REDACTED]

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The Case Agent, [REDACTED] characterized this authority as both
necessary and effective. While the roving authority did not
thwart a terrorist act, it better enabled the Agents to
successfully and more expeditiously conclude the investigation.
All participants agreed that the option to consider securing this
authority is critical in resolving serious IT and FCI matters.

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New Standard for FISA Pen/Trap

For reasons of which OGC is aware, the lower
evidentiary standard to establish grounds to secure FISA
pen/traps has not been adequately exploited in IT and FCI

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C136426 03/24/2004

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matters. [REDACTED] has submitted some requests, but until the process is expedited and made more akin to the ease with which criminal pen/traps are secured, the law has been of little benefit. In fact, in at least one 315 case, criminal pen/trap orders (and grand subpoenas) were used largely because of the perceived slow pace in using FISA techniques, despite the fact that a full content FISA was later approved. [REDACTED]

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Changes to "Primary Purpose" Standard for FISA

The change to the FISA certification now requiring that foreign intelligence be a "significant purpose" of the authority sought has benefitted the FBI's mission in general, and [REDACTED] investigations in particular, as it has made considering and/or obtaining FISAs more possible under appropriate circumstances. If nothing else, it has also given Agents more flexibility in determining how to most effectively use investigative strategies to protect against terrorism and clandestine intelligence activities. And similarly, consultation with prosecutors has improved.

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New Standard for Business Records for FISA

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[REDACTED] notes the process would appear to be greatly improved based on recent changes allowing FBIHQ/OGC to bypass OIPR, but the benefits have not been fully realized yet.
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To: General Counsel From:
Re: 66F-HQ-C136426 03/24/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

For information and possible use by ILU in support of continuing usage of certain provisions of the USA Patriot Act beyond 12/31/2005.

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(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/22/2004

To: General Counsel

Attn: Investigative Law Unit

Room 7326

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From:

Legal Unit

Contact: ADC

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Approved By:

Drafted By:

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Case ID #: 66F-HQ-C1364260 (Pending) - 45
197- [redacted] (Pending) - 8390
[redacted] C233355 (Pending) - 4

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Title: USA PATRIOT ACT
SUNSET PROVISIONS

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Synopsis: To provide [redacted] response to request for examples and summaries of use of investigative tools created by the USA PATRIOT Act. Lead covered.

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Reference: 66F-HQ-C134260 Serial 5

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Details: This EC provides a brief narrative summarizing [redacted] use of investigative tools created by the USA PATRIOT Act. A canvas was conducted of all squads in the Los Angeles Division and the following details the results:

Voice Mail - Section 209 of the Act enabled law enforcement to obtain all voice mail which is stored by a communications provider, including unopened voice mail, using the procedures set forth in 18 U.S.C. §2703 (such as a search warrant). This also applies to other wire communications as defined by the statute. Voice messages stored and in the possession of the user, such as messages on an answering machine, are not covered by this statute. Previously the law was vague on the standard required to compel production of a stored voice mail message, leaving the possibility for argument that a wiretap order was required. See 18 U.S.C. § 2510; 18 U.S.C. § 2703.

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

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Nationwide Search Warrants for E-mail and Associated Records - Section 220 of the Act enabled courts with jurisdiction over an investigation to issue a search warrant with nationwide jurisdiction to compel the production of information held by a service provider, such as unopened e-mail. Previously, the search warrant had to be issued by a court in the district where the service provider was located. See 18 U.S.C. § 2703.

This technique was utilized by the [REDACTED] following the shooting on July 4, 2002 at [REDACTED] International Airport. It was extremely helpful in this investigation for the Central District of California to be able to issue nationwide search warrants for information on the subject's email.

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Voluntary Disclosures - Section 212 of the law explicitly permits, but does not require, a service provider to disclose to law enforcement either content or non-content customer records in emergencies involving an immediate risk of death or serious physical injury to any person. This voluntary disclosure, however, does not create an affirmative obligation to review customer communications in search of such imminent dangers. This provision also allows a communications service provider to disclose non-content records to protect their rights and property. This portion of the provision will most often be used when the communications service provider itself is a victim of computer hacking. See 18 U.S.C. § 2702(b) & (c)(3); 18 U.S.C. § 2703(c)(2)(F).

For about ten months (January 2003-November 2003) there was a mandatory reporting requirement for the receipt of content information (usually e-mail content) under this emergency disclosure provision. (See the Homeland Security Act and EC 66F-HQ-C1384970 Serial 501.) During that time, offices were only required to report the number of e-mail messages that were received under this voluntary disclosure provision. Offices were not required to report the receipt of records and were also not required to provide case information. For this reason, it would be beneficial for offices to now report more detail on these voluntary disclosures. Examples where voluntary disclosures led to valuable foreign intelligence or arrests would be particularly helpful.

[REDACTED] (S)
Moreover, this was the practice after 9-11, where service providers voluntarily provided FBI Los Angeles with the information requested. In an emergency or crisis situation it would be imperative to the investigation for

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To: General Counsel File: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

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service providers to have this ability to voluntarily provide the FBI with this information. Where time is of the essence, giving service providers the option of revealing this information without a court order or grand jury subpoena is crucial to receiving the information quickly. This is what occurred after 9-11 and should continue to be in place in the eventuality of another such attack.

Information Sharing - Section 203(b) & (d) of the Act provided new information sharing capabilities between criminal and intelligence investigations for foreign intelligence information and information obtained via a Title III electronic surveillance. (See EC [REDACTED] dated 10/26/01 for additional information.) Recognizing that this tool has become a regular part of how the FBI operates, especially in terrorism cases, no statistics are necessary. However, case examples that demonstrate the importance of this tool should be provided.

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All [REDACTED] CT and CI investigation continue to benefit from this provision of the USA PATRIOT Act. A good example of this in Los Angeles is the case where the intelligence investigation of an FBI Supervisory Special Agent and a member of the PRC revealed information that the intelligence squad was able to share with a criminal squad for prosecution on criminal charges. Information sharing has also been invaluable between CT/CI investigations and criminal investigations into violations of neutrality, fraudulent document production, passport/visa violations, immigration violations, white collar crimes, drug cases, and all types of fraud schemes.

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Intercepting Communications of Computer Trespassers - Section 217 of the Act clarified an ambiguity in the law by explicitly providing victims of computer attacks the ability to invite law enforcement into a protected computer to monitor the computer trespasser's communications. Before monitoring can occur, however, four requirements must be met. First, consent from the owner or operator of the protected computer must be obtained. Second, law enforcement must be acting pursuant to an ongoing investigation. Both criminal and intelligence investigations qualify, but the authority to intercept ceases at the conclusion of the investigation. Third, law enforcement must have reasonable grounds to believe that the contents of the communication to be intercepted will be relevant to the ongoing investigation. And fourth, investigators must only intercept the communications sent or received by trespassers. Thus, this section would only apply where the configuration of the computer system allows the interception of communications to and from the trespasser, and not the interception of non-consenting authorized users. Additionally, based on the definition of a "computer

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

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trespasser," communications of users who have a contractual relationship with the computer owner may not be monitored, even if their use is in violation of their contract terms (i.e. spammers). See 18 U.S.C. § 1030(e)(2); 18 U.S.C. § 2510 (20) & (21); 18 U.S.C. § 2511(2)(i).

This provision has proven especially useful to the [REDACTED] and is considered a key aspect of all cyber investigations. "Hackers" routinely use victim computers for SPAM and other illegal communications. Therefore, this provision has proven useful in both intelligence and criminal investigations. Recently this method has been used on at least two occasions in intelligence cases where the FBI took over the victim's on-line identity to communicate with the suspected terrorists.

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Expanded Predicates for Title III - Sections 201 & 202 of the Act expanded the predicate offenses for Title III to include crimes relating to chemical weapons (18 U.S.C. § 229), terrorism (18 U.S.C. §§ 2332, 2332a, 2332b, 2332d, 2339A, and 2339B), and felony violations of computer fraud and abuse (18 U.S.C. § 1030). See 18 U.S.C. § 2516.

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[REDACTED] yet but it is anticipated that the expanded predicate offenses for computer fraud and abuse will become essential to several Los Angeles investigations.

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Roving FISA Surveillance - Section 206 amended FISA to allow the Court to issue a "generic" secondary order where the Court finds that the "actions of the target of the application may have the effect of thwarting the identification of a specified person." This means that, when a FISA target engages in trade craft designed to defeat electronic surveillance, such as by rapidly switching cell phones, Internet accounts, or meeting venues, the Court can issue an order directing "other persons," i.e., the as yet unknown cell phone carrier, Internet service provider, etc., to effect the authorized electronic surveillance. Even if the target is not engaged in obvious trade craft, we can obtain such an order as long as the target's actions may have the effect of thwarting surveillance. This allows the FBI to go directly to the new carrier and establish surveillance on the authorized target without having to return to the Court for a new secondary order. For additional information see EC [REDACTED] dated 10/26/01. Any examples where roving authority has been obtained and utilized to gain valuable foreign intelligence should be provided.

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The roving wiretap provision has been extremely helpful in [REDACTED] One specific example is that Los Angeles has

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To: General Counsel File: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

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seen counterintelligence targets change service for hard-lines, email accounts, and cell phones numerous times. The roving FISA authority has allowed for investigators to continuously monitor these targets without interruption. Changing of telephone carriers is a documented technique used by foreign intelligence officers to avoid detection. [REDACTED] has documented these occurrences and been able to continue coverage because of this provision. b2 b7E

New Standard for FISA Pen/Trap - Section 214 of the Act eliminated the requirement that the FISA pen/trap order include specific and articulable facts giving reason to believe that the targeted line was being used by an agent of a foreign power, or was in communications with such an agent, under specified circumstances. FISA pen/trap and trace orders are now available whenever the FBI certifies that "the information likely to be obtained is foreign intelligence information not concerning a United States person, or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." For additional information see EO [REDACTED] dated 10/26/01. b7A

This provision has not proven useful to [REDACTED] b2
Although the standard has been lowered the reality of the work load situation at OIPR makes this technique not viable. With the creation of the 315 classification, an agent has much better luck with getting a pen register under criminal standards than waiting for a FISA pen register to be approved. Moreover, if agents are going to take the time to fill out the paperwork for the FISA pen register, they might as well complete an actual FISA application. In one example, an agent was told she had enough for a FISA and not to waste time with the pen register. In another situation, the agent made the pen register request first and then several months later requested the FISA and never again heard anything on the pen register. If this was something that could be approved at HQ or locally, then it might be a valuable technique, but with the backlog on FISAs it is impractical to request a pen register FISA and then wait months to hear nothing. b7E

Changes to "Primary Purpose" Standard for FISA -
Section 218 changed FISA to require a certification that foreign intelligence be "a significant purpose" of the authority sought. Section 504 amended FISA to allow personnel involved in a FISA to consult with law enforcement officials in order to coordinate efforts to investigate or protect against attacks, terrorism, sabotage, or clandestine intelligence activities, and that such

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

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consultation does not, in itself, undermine the required certification of "significant purpose." These changes allow FBI agents greater latitude to consult criminal investigators or prosecutors without putting their FISAs at risk. For additional information see EC 66F-HQ-A1247863 Serial 71 dated 10/26/01. While no statistics are required for this provision, case examples and brief narratives on the benefits of this provision are sought.

This is the single most important provision of the USA Patriot Act. [REDACTED] investigations have revealed that more often than not the suspected terrorists or intelligence officers are committing criminal violations in support of their terrorist activities. The ability to obtain a FISA order where there is substantial evidence of criminal activity and significant evidence that the proceeds are then being used to fund terrorist activities is imperative to these types of investigations. This provision also goes hand-in-hand with the information sharing provision. The shift in focus allows investigators to coordinate more with AUSAs and other law enforcement information regarding the criminal activities of terrorists.

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New Standard for Business Records under FISA - Section 215 changed the business records authority found in Title V of FISA. The old language allowed the FISA Court to issue an order compelling the production of certain defined categories of business records upon a showing of relevance and "specific and articulable facts" giving reason to believe that the person to whom the records related was an agent of a foreign power. Section 215 changed this standard to simple relevance (just as in the FISA pen register standard described above) and gave the Court the authority to compel production of "any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution." This is the same standard described above for Section 214. For additional information see EC [REDACTED] 71 dated 10/26/01.

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Although [REDACTED] views this as an extremely valuable technique [REDACTED]

[REDACTED] is aware of efforts by NSL to resolve this issue with OIPR. [REDACTED] would argue that this is an extremely valuable technique because of the ability to obtain records where an NSL is not appropriate. The standard of simple relevancy should be sufficient for these

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364260, 03/22/2004

investigations. NSLB should make all attempts to enforce this
standard and not permit OIPR to create a higher standard which
would make use of this technique more difficult. b2 b7E

[REDACTED] considers this lead covered.

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To: General Counsel Fr:
Re: 66F-HQ-C1364260, 03/22/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Investigative Law Unit: Read and clear.

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ALL INFORMATION CONTAINED
(Ref ID: A66312) HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

DATE: 08-29-2005
CLASSIFIED BY 65179 DMH/KJ/05-cv-0845
REASON: 1.4 (c)
DECLASSIFY ON: 08-29-2030

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FEDERAL BUREAU OF INVESTIGATION

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Precedence: PRIORITY

Date: 03/19/2004

To: General Counsel

Attn: Investigative Law Unit,
AGC [REDACTED]

From: [REDACTED]

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Squad 2

Contact: CDC [REDACTED]

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Approved By: [REDACTED]

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Drafted By: [REDACTED] *46*

Case ID #: (U) 66F-HQ-C1364260 (Pending)
(U) 66F-HQ-C1384970 *-8401*

Title: (U) USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: (U) To provide Investigative Law Unit (ILU), Office of the General Counsel (OGC), with statistics and examples of the benefits [REDACTED] has derived from specified provisions of the USA PATRIOT Act.

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~~(S)~~ (U) ~~Derived From: G-3~~
~~Declassify On: X1~~

Reference: (U) 66F-HQ-C1364260 Serial 5

Details: (U) Referenced communication instructed all field offices to provide ILU with statistics, examples and/or a brief narrative summarizing the benefits each division has derived from specified provisions of the USA PATRIOT Act.

(S) Referenced communication set forth a list of specific techniques for which each field office is to report statistics concerning its use. [REDACTED]

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To: General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/19/2004

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(U) Set forth below are statistics and/or descriptions concerning Milwaukee Division's use of the remaining specified techniques:

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(U) ~~(S)~~ The [REDACTED] would clearly have submitted additional requests for such orders in a number of other cases but for the fact that, to date, no such orders have ever been issued. [REDACTED] experience is that FISA business record orders are likely to prove essential in numerous investigations once they begin to be issued.

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(U) ~~(S)~~ One of the two exceptions noted above pertained to an individual who ultimately became the target of a FISA full content interception. [REDACTED] therefore believes that pen and trap order could still have been obtained in that instance under the previous, higher, standard. With regard to the second exception, although a foreign power was identified, [REDACTED] believes it would still have been difficult to meet the prior standard. Furthermore, the time involved with obtaining the

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To: General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/19/2004

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facts necessary to support the affidavit would have probably resulted in [REDACTED] missing the window of opportunity for deploying the technique.

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[REDACTED] 315N

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classification investigations (none of which are in conjunction with an application for an order authorizing the interception of the content of communications). While each instance meets the current "relevancy" standard, it is questionable whether any of these three orders could be obtained under the previous, higher, standard.

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(U) ~~(S)~~ Changes to the Primary Purpose Standard: This change, which removed the risk of having to shut down the Division's most productive FISC authorized techniques in the event information was shared with prosecutive personnel, has directly let to a dramatic improvement in case coordination (see "information sharing" below). The change in the Primary Purpose standard, and consequent removal of "the wall," has fundamentally changed and enhanced the manner in which the [REDACTED] conducts international terrorism and foreign counterintelligence investigations.

(U) ~~(S)~~ Information Sharing: Due to elimination of the Primary Purpose standard, [REDACTED] sharing of information with regard to terrorism investigations has become routine. It is now standard practice that all [REDACTED] 315 classification cases are reviewed for federal criminal prosecutive potential by appropriately cleared United States Attorney's Office personnel. The changes in this area have led to US Attorney personnel being incorporated as essential and integral components of JTTFs in both [REDACTED] headquarters city and the Madison Resident Agency.

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(U) ~~(S)~~ For example, the First Assistance United States Attorney, [REDACTED] has FBI office access, a desk in [REDACTED] JTTF office space and a GroupWise account. He is continually (almost daily) briefed on significant cases. In fact, the US Attorney's Office [REDACTED] Intelligence Officer assigned to FBI [REDACTED] JTTF actually serves as the Coordinator of that JTTF.

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(U) ~~(S)~~ Similar coordination occurs with regard to the United States Attorney's Office, [REDACTED] and the JTTF located in the [REDACTED] Resident Agency.

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To: General Counsel From: [REDACTED]
Re: (U) 66F-HQ-C1364260, 03/19/2004

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investigation.

(U) ~~(S)~~ While information sharing is a rather novel concept with regard to FCI investigations, its importance to [REDACTED] efforts in this area also cannot be overstated. Traditionally, FCI investigations have been hamstrung by rules that did not allow investigators to consult with prosecutors until the investigation was essentially over. Specific examples of the benefits which the new rules have brought to FCI investigations in [REDACTED] include the United States Attorney's Office [REDACTED] providing advice and consent to seize and initiate forfeiture of \$30,000 which was brought into the United States illegally by the subject of a 200M investigation. The US Attorney's Office has also provided counsel in [REDACTED] FCI cases regarding violations of the Foreign Agent Registration Act.

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To: General Counsel From:
Re: (U) 66F-HQ-C1364260, 03/19/2004

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LEAD(s):

Set Lead 1: (Information Only)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) This information is provided for appropriate use
by the Investigative Law Unit.

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 03/31/2004

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To: OGC

Attn: ILU, room 7326

From:

[Redacted]

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Legal

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Contact:

[Redacted]

[Redacted]

Approved By:

[Redacted]

Drafted By:

[Redacted]

b6

b7C

DATE: 09-12-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (C)
DECLASSIFY ON: 09-12-2030

05-CV-0845

Case ID #: 66F-HQ-C1364260 (PENDING)
66F-HQ-C1384970

Title: USA Patriot Act
Sunset Provisions

Synopsis: Use of Sunset Provisions of USA Patriot Act by

[Redacted]

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Reference:

[Redacted]

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Details: Between 03/25/04 and 03/30/04, writer contacted the four counter terrorism supervisors, two counter intelligence supervisors, and four SSRAs in the [Redacted] as to the uses of the Sunset Provisions of the USA Patriot Act. Many of the supervisors stated that their numbers were approximate and other instances of the use of these provisions were possible prior the supervisor assuming leadership of the squad. All of the supervisors agreed that the Sunset Provisions are very useful and necessary in the war on terrorism.

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The following are the number of instances that the Houston Division has reported utilizing each of the Sunset Provisions:

Section 209

Section 220

Section 212

Section 203

[Redacted]

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093 cd 005

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To: OGC From: [REDACTED] b7E
Re: 66F-HQ-C136426 (PENDING), 03/31/2004

Section 217

Section 201

Section 206

Section 214

Section 218

Section 215

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* Virtually all of the supervisors spoke to the necessity of the Section 203 (b) and (c), the Information Sharing provision. It universally was lauded as a major step forward in the war on terrorism. [REDACTED] utilized contacts with [REDACTED] in the development of the case. One counter intelligence supervisor cited 4-5 cases where the FBI could not have made a case on terrorism, but for contacts with the United States Intelligence community. Information sharing was utilized heavily in putting together terrorism watch plans for the 2004 Super Bowl and 2004 Baseball-All Star Game. Three other supervisors cited sensitive cases made, or greatly assisted by, our newly obtained ability to share information with the intelligence community.

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** One squad was in the process of attempting to utilize section 201 and 202 (Expanded Title III predicates), but, because of an emergency, utilized a FISA instead of a Title III.

*** One supervisor stated that even though his squad did not utilize the traditional roving FISA Surveillance as explained in Section 206, he had FISA search warrants authority granted for all vehicles being utilized by his squad's targets.

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(Rev. 01-31-2003)

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WHERE SHOWN OTHERWISE

DATE: 08-24-2005
CLASSIFIED BY 65179 DMH/KJ
REASON: 1.4 (c)
DECLASSIFY ON: 08-24-2030

FEDERAL BUREAU OF INVESTIGATION

05-cv-0845

Precedence: ROUTINE

Date: 03/19/2004

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To: General Counsel

Attn:

Investigative Law Unit
FBIHQ Room 7326

From:

Squad #2

Contact:

b2

b7E

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b7C

Approved By:

Drafted By:

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b7C

Case ID #: 66F-HQ-C1364260 (Pending)
66F-HQ-C1384970 (Pending)

Title: USA PATRIOT ACT
SUNSET PROVISIONS

Synopsis: To respond to the Office of General Counsel (OGC)
regarding captioned matter.

Details: For information of OGC, by EC dated 02/27/2004, OGC
requested field divisions provide examples, statistics, anecdotal
information and brief narratives summarizing the benefits derived
by the office through the use of these provisions.

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The following provisions have been used by the

Nationwide Search Warrants for E-mail and Associated records:

This provision has been used several times in Child Exploitation
Matters (305 cases).

In one instance, a subject in [redacted] downloaded
illegal child pornography images from a server located in
Fremont, California. A search warrant utilizing this provision
was obtained in the [redacted] for records in the
server located in Fremont, California.

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In another 305 matter, Nationwide Search warrants were used to
obtain evidence from AOL, Yahoo, and 23 photo albums located on a
server in the [redacted]

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This provision was utilized in [redacted] additional 305
investigations.

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66F-HQ-1384970-8611

~~SECRET~~

To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364267, 03/19/2004

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New Standard for FISA Pen/Trap:

[REDACTED]
The new standard of "relevant to an ongoing investigation" was critical in obtaining a pen/trap and the information obtained through the pen/trap will lead to a full investigation.

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Information Sharing: Section 203 (b) & (d)

This provision has been the most helpful and has been used the most throughout the division. Specifically the case where the most impact was observed is the investigation of the Palestinian Islamic Jihad (PIJ) and [REDACTED]. Specifically, before "the wall" came down, the presence of "the wall" had a negative impact on the ability of the criminal investigators to develop a viable criminal case for prosecution. There was approximately nine (9) years of FISA take that couldn't be shared with the criminal investigators. The majority of the PIJ indictment was prepared in Mid-2002, prior to "the wall" coming down, utilizing information that had been formally passed over "the wall" with appropriate authority and after substantial effort by both criminal and intelligence investigators. This information consisted of approximately 250 FISA-derived conversations and approximately 100 FISA-derived faxes.

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After "the wall" came down, in approximately January 2003, over 20,000 hours of FISA-derived intercepts became immediately available for use by the criminal investigators, which included thousands of calls previously deemed to be pertinent. Although welcome, it created a significant information overload. Consequently the criminal investigation is still ongoing, but clearly, bringing down "the wall" allowed criminal investigators the opportunity to enhance their investigation, which was already set for indictment, in spite of "the wall." The criminal investigators and prosecutors now have a clearer understanding of the criminal activities of the PIJ, because all pertinent information in possession of the FBI is now available for their use.

In addition to information sharing "in-house," this provision has broadened the sharing between federal and state and local agencies. This broadened sharing between agencies has encouraged a regular interaction between investigators. In a specific case in Orlando, information sharing has led to joint investigations or subjects in the group. Through coordination and sharing, Tampa has been able to place leaders of the targeted group in [REDACTED] which prevented them from returning to the U.S. after departing.

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To: General Counsel From: [REDACTED]
Re: 66F-HQ-C1364200, 03/19/2004

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To: General Counsel From:
Re: 66F-HQ-C13642, 03/19/2004

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LEAD(s):

Set Lead 1: (Info)

GENERAL COUNSEL

AT WASHINGTON, DC

Read and Clear

♦♦

~~SECRET~~

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Attn: [redacted]

b6 , b7C

Subject: Attn: [redacted]

Date: Fri, 6 Sep 2002 10:21:58 -0400

b6

b6

From: "[redacted]" <[redacted]>

b7C

b7C

To: <nationalpress@FBI.GOV>

[Handwritten signature]

Hi, [redacted]

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-15-2005 BY 65179 dmh/ljm ca#05-cv-0845

Thank you for your assistance.

Following are the questions I would like to ask of a spokesperson for the FBI with regard to the events of Sept. 11, 2001, and the passage of the Patriot Act in October 2001. But first, I would like to explain how I plan to use these comments.

Our staff is preparing an article that will reflect upon the events of Sept. 11, 2001, and the passage of the Patriot Act, and how those events have changed the financial crimes arena, particularly with regard to money laundering. As a sidebar to the main article, we are asking several key figures on the money laundering front to share their general thoughts and comments on the past year's events and how they have changed the operation of their agencies and organizations. The article will be very straightforward and simple, featuring just one or two direct quotes from each of our contacts.

Here are the questions:

1. What did 9-11 and the passage of the Patriot Act mean to your agency?
2. Could you share some specific details as to how things have changed within your agency?
3. Have you had to enhance the training of your staff? If so, to what extent and how did you carry out that training?
4. Has the level of communication changed between your agency and other government agencies that deal with money laundering? If so, how has it changed?

Thank you for offering to pass these questions along to someone -- either [redacted] or another spokesperson. I appreciate your assistance.

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Regards, [redacted]

[redacted]

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Tel. [redacted]

ext. [redacted]

Fax [redacted]

[redacted]

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9/10/02 Declined. YTM

ORIGINAL

80-HQ-1199962-2693

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SUNSET PROVISIONS IN BOLD

TITLE II--ENHANCED SURVEILLANCE PROCEDURES

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.

Sec. 203. Authority to share criminal investigative information.

203 (b) (Title III) and (d) (Grand Jury)

Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.

Sec. 205. Employment of translators by the Federal Bureau of Investigation.

Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.

Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.

Sec. 208. Designation of judges.

Sec. 209. Seizure of voice-mail messages pursuant to warrants.

Sec. 210. Scope of subpoenas for records of electronic communications.

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DATE 12-07-2000

BY 17902/ML/STW

Sec. 211. Clarification of scope.

Sec. 212. Emergency disclosure of electronic communications to protect life and limb.

Sec. 213. Authority for delaying notice of the execution of a warrant.

Sec. 214. Pen register and trap and trace authority under FISA.

Sec. 215. Access to records and other items under the Foreign Intelligence Surveillance Act.

Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.

Sec. 217. Interception of computer trespasser communications.

Sec. 218. Foreign intelligence information.

Sec. 219. Single-jurisdiction search warrants for terrorism.

Sec. 220. Nationwide service of search warrants for electronic evidence.

Sec. 221. Trade sanctions.

Sec. 222. Assistance to law enforcement agencies.

Sec. 223. Civil liability for certain unauthorized disclosures.

Sec. 224. Sunset.

Sec. 225. Immunity for compliance with FISA wiretap.

What did Patriot Act do?

1. Enlarged ELSUR capabilities

- 201 and 202 added predicate terrorism-related offenses for T-III
- 206 - Roving wiretap
- 207 - extended duration of FISA
- 209 - voice mail with a search warrant
- 214 - FISA Pen standard made congruent with criminal standard
- 216 - nationwide effect of pen/trap orders
- 217 - computer trespasser
- 218 - FISA "purpose" changed to "significant purpose"
- 220 - nationwide search warrants for e-mail
- 225 - civil liability immunity for compliance with FISA order

2. Encouraged sharing of information

- 203 (a) - Grand Jury information
- 203(b) - Title III information
- 203(d) - Any foreign intelligence information
- 901 & 905 - coordination between DCI and FBI

3. Made intelligence investigative techniques congruent with criminal techniques

- 206 - Roving wiretap authority
- 214 - Pen/trap standard
- 215 - Standard for business records
- 505 - Standard for NSLs

4. Expanded anti-terrorism financial tools

- 314 - enhance USG/financial institution cooperation re: money laundering
- 315 - expand money laundering predicates
- 317 & 318 - long-arm jurisdiction over foreign money-launderers
- 319 - jurisdiction over foreign funds in U.S. correspondent accounts
- 320 - expands forfeiture for offenses against foreign nations
- 323 - enforcement of foreign forfeiture judgments
- 324 - expands geographic targeting orders
- 359 - SARS
- 363 - expands penalties for money laundering
- 372 - criminal and civil forfeitures in currency-reporting cases
- 374 - expands counterfeiting statute
- 375 - expands penalty for counterfeiting foreign currency
- 376 - material support included in money laundering
- 377 - extra-territorial jurisdiction for fraud with (e.g.) credit card numbers
- 1004 - expanded jurisdiction for money laundering

5. Visitor controls

- 412 - AG required to detain aliens he certifies as threat to NS
- 413 - share visa records with foreign governments
- 416 - AG to expand foreign student visa monitoring

6. Expanded criminal statutes

- 801 - attacks on mass transportation systems
- 803 - criminalizes harboring of certain offenders
- 804 - crimes at foreign missions
- 805 - expanded "material support"
- 806 - civil forfeiture of terrorist assets
- 809 - eliminated statute of limitations for some offenses
- 810 - enhanced penalties for certain crimes
- 811 - attempt and conspiracy added
- 814 - expanded jurisdiction for computer crimes
- 817 - expanded biological weapons statute
- 1011 - unlawful to fraudulently solicit charitable contribution

SUNSET PROVISIONS IN BOLD

TITLE II--ENHANCED SURVEILLANCE PROCEDURES

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism. (1)

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses. (1)

Sec. 203. Authority to share criminal investigative information.

203 (b) (Title III) and (d) (Grand Jury) (1)

Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications. (1)

Sec. 205. Employment of translators by the Federal Bureau of Investigation.

Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978. (1)

Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power. (2)

Sec. 208. Designation of judges.

Sec. 209. Seizure of voice-mail messages pursuant to warrants. (2)

Sec. 210. Scope of subpoenas for records of electronic communications.

Sec. 211. Clarification of scope.

Sec. 212. Emergency disclosure of electronic communications to protect life and limb. (1)

Sec. 213. Authority for delaying notice of the execution of a warrant.

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Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.

Sec. 217. Interception of computer trespasser communications. (1)

Sec. 218. Foreign intelligence information. (1)

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Sec. 220. Nationwide service of search warrants for electronic evidence.

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Sec. 223. Civil liability for certain unauthorized disclosures.

Sec. 224. Sunset.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MUSLIM COMMUNITY ASSOCIATION OF ANN
ARBOR; AMERICAN-ARAB ANTI-DISCRIMINATION
COMMITTEE; ARAB COMMUNITY CENTER FOR
ECONOMIC AND SOCIAL SERVICES; BRIDGE
REFUGEE & SPONSORSHIP SERVICES, INC;
COUNCIL ON AMERICAN-ISLAMIC RELATIONS;
ISLAMIC CENTER OF PORTLAND, MASJED
AS-SABER,

Plaintiffs,

v.

JOHN ASHCROFT, in his official capacity as Attorney
General of the United States; ROBERT MUELLER, in his
official capacity as Director of the Federal Bureau of
Investigation,

Defendants.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Case No.

Hon.

ANN BEESON
JAMEEL JAFFER
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004-2400
(212) 549-2500

MICHAEL J. STEINBERG
NOEL SALEH
KARY L. MOSS
American Civil Liberties Union Fund of Michigan
60 West Hancock
Detroit, MI 48201-1343
(313) 578-6800

Attorneys for Plaintiffs.

COMPLAINT

PRELIMINARY STATEMENT

1. This lawsuit challenges the constitutionality of Section 215 of the USA PATRIOT Act, which vastly expands the power of the Federal Bureau of Investigation ("FBI") to obtain records and other "tangible things" of people not suspected of criminal activity. Pub. L. No. 107-56, 115 Stat. 272 (Oct. 26, 2001) ("Patriot Act" or "Act"). The FBI can use Section 215 to obtain personal belongings, including "books, records, papers, documents, and other items," directly from a person's home. It can also order charities, political organizations, libraries, hospitals, Internet Service Providers, or indeed *any* person or entity to turn over the records or personal belongings of others. The FBI can use Section 215 against anyone at all, including United States citizens and permanent residents.

2. Section 215 is invalid on its face. To obtain a Section 215 order, the FBI need only assert that the records or personal belongings are "sought for" an ongoing foreign intelligence, counterintelligence, or international terrorism investigation. The FBI is not required to show probable cause — or any reason — to believe that the target of the order is a criminal suspect or foreign agent. The FBI can obtain and execute Section 215 orders in total secrecy. The targets of Section 215 orders are *never* notified that their privacy has been compromised — even years later, and even if they are innocent. The law includes a gag provision that prohibits persons or entities served with Section 215 orders from ever disclosing, even in the most general terms, that the FBI has sought information from them. By seriously compromising the rights to privacy, free speech, and due process, Section 215 violates the First, Fourth, and Fifth Amendments of the United

States Constitution. Plaintiffs respectfully seek a declaration that Section 215 is facially unconstitutional, and a permanent injunction against its enforcement.

JURISDICTION AND VENUE

3. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the United States Constitution and 28 U.S.C. § 1331. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* The Court has authority to award costs and attorneys' fees under 28 U.S.C. § 2412. Venue is proper in this district under 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff Muslim Community Association of Ann Arbor ("MCA") is a non-profit, membership-based organization that serves the religious needs of Muslims in and around Ann Arbor, Michigan. MCA owns and administers a mosque and an Islamic school. MCA sues on its own behalf and on behalf of its members, students, and constituents.

5. Plaintiff American Arab Anti-Discrimination Committee ("ADC") is a non-profit civil rights organization committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. ADC, which is non-sectarian and non-partisan, is the largest Arab-American grassroots organization in the United States. Based in Washington, D.C., it was founded in 1980 by former United States Senator James Abourezk and has chapters nationwide. ADC sues on its own behalf and on behalf of its members and constituents.

6. Plaintiff Arab Community Center for Economic and Social Services ("ACCESS") is a Detroit-based human services organization committed to the development of the Arab-American community in all aspects of its economic and cultural life. Among other services, ACCESS operates a Community Health and Research Center. ACCESS sues on its own behalf and on behalf of its members, clients, and constituents.

7. Plaintiff Bridge Refugee & Sponsorship Services, Inc. ("Bridge") is an ecumenical, non-profit organization based in Knoxville, Tennessee, dedicated to helping refugees and asylum seekers become and stay self-sufficient. Bridge is affiliated with Church World Service and with Episcopal Migration Ministries. Bridge recruits and trains church sponsors to help refugees create new lives in East Tennessee, and provides services until refugees are eligible to apply for United States citizenship. Bridge sues on its own behalf and on behalf of its clients.

8. Plaintiff Council on American Islamic Relations ("CAIR") is a non-profit, mainstream, grassroots organization dedicated to enhancing the public's understanding of Islam and Muslims. CAIR is the largest Islamic civil liberties organization in the United States. CAIR is based in Washington, D.C., and has chapters nationwide and in Canada. CAIR sues on its own behalf and on behalf of its members and constituents.

9. Plaintiff Islamic Center of Portland, Masjed As-Saber ("ICPMA"), is a non-profit organization that serves the religious needs of Muslims in and around Portland, Oregon. ICPMA owns and administers a mosque known as Masjed As-Saber and an Islamic school known as the Islamic School of Portland. ICPMA sues on its own behalf and on behalf of its community members and students.

10. Defendant Attorney General John Ashcroft heads the United States Department of Justice, which is the agency of the United States government responsible for enforcement of federal criminal laws and domestic intelligence investigations. Defendant Attorney General Ashcroft has ultimate authority for supervising all of the operations and functions of the Department of Justice. The Department of Justice includes the FBI, the agency authorized to use the law challenged in this case.

11. Defendant Robert Mueller is the Director of the FBI, which is the principal investigative arm of the United States Department of Justice. Defendant Robert Mueller is responsible for supervising all of the operations and functions of the FBI. The FBI is the agency authorized to use the law challenged in this case.

STATUTORY LANGUAGE AT ISSUE

12. The Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1801 *et seq.*, was enacted in 1978 to govern FBI surveillance of foreign powers and their agents inside the United States. *See* Pub. L. 95-511, 92 Stat. 1783 (Oct. 25, 1978). Through FISA, Congress created the Foreign Intelligence Surveillance Court ("FISA Court"), originally composed of seven (now eleven) federal district judges empowered to grant or deny government applications for FISA surveillance orders. *See* 50 U.S.C. § 1803.

13. Since 1978, Congress has amended FISA numerous times, each time adding new tools to the FBI's foreign intelligence toolbox or expanding the class of investigations in which such tools may be employed.

14. One amendment, which was codified as Subchapter IV of FISA, authorized the FBI to obtain "business records" from vehicle rental agencies, common carriers, storage facilities, and other similar businesses if the FBI had "specific and

articulable facts" giving reason to believe that the records in question pertained to a foreign agent or power. *See* Pub. L. 105-272, Title VI, § 602, 112 Stat. 2411 (Oct. 20, 1998).

15. The Patriot Act was passed on October 26, 2001.

16. Section 215 of the Patriot Act amended Subchapter IV of FISA by:

(i) allowing the FBI to demand the production of "any tangible things (including books, records, papers, documents, and other items)," and not just business records; (ii) allowing the FBI to demand books, records and other tangible things from *anyone*, and not just from vehicle rental agencies and other third parties; and (iii) allowing the FBI to demand books, records and other tangible things without showing any evidence that the person whom it is investigating is a foreign agent. *See* 50 U.S.C. § 1861(a)(1).

17. Section 215 does not require the FBI to show probable cause or any reason to believe that the records or personal belongings sought pertain to a person involved in criminal activity or to a foreign agent or foreign power. *See id.* § 1861(b)(2). The provision requires only that the FBI certify to the FISA Court that the books, records, or other tangible things demanded on the authority of the provision are "sought for" a foreign intelligence, clandestine intelligence, or international terrorism investigation. As a result of the changes effected by the Patriot Act, the FBI is now authorized to use Section 215 even against people who are known to be altogether unconnected to criminal activity or espionage.

18. Section 215 requires the FISA Court to defer to the FBI's specification that the records or personal belongings sought by a Section 215 order are sought for an investigation to obtain foreign intelligence information or to protect against international

terrorism or clandestine intelligence activities. The FISA Court has no statutory authority to examine the foundation of the FBI's specification or to reject the specification as unfounded. *See id.* § 1861(b)(2) & (c)(1).

19. Section 215 does not require the FBI to have reason to believe that the records or personal belongings sought pertain to a particular suspect or a particular offense. Accordingly, the FBI could use Section 215 to obtain from a bookstore a list of people who had purchased a particular book, or to obtain from a health clinic a list of patients who had received medical care. The FBI need not state or even know in advance which individuals' privacy will be infringed.

20. At a hearing before the House Judiciary Committee on June 5, 2003, Defendant Attorney General John Ashcroft stated that, prior to the Patriot Act, the government "used to have [to allege] a reason to believe that the target is an agent of a foreign power," a standard he agreed was "lower than probable cause." He acknowledged that, under Section 215, the government may now obtain "all relevant, tangible items" without such a showing.

21. Section 215 does not require the FBI ever to notify surveillance targets that it has obtained their records or personal belongings.

22. Section 215 does not include any procedure that would allow a person or entity served with a Section 215 order to challenge the order's constitutionality before turning over the records or personal belongings sought by the order.

23. Section 215 authorizes the FBI to obtain records or personal belongings of United States citizens and permanent residents based in part on "activities protected by the first amendment to the Constitution." *Id.* § 1861(a)(1); *see also* § 1861(a)(2)(B).

24. Section 215 authorizes the FBI to obtain records or personal belongings of people who are not United States citizens or permanent residents based *solely* upon "activities protected by the First Amendment to the Constitution." *See id.* § 1861(a)(1); *see also* § 1861(a)(2)(B).

25. Section 215 requires the FISA Court to defer to the FBI's specification that the investigation is not being conducted of a United States person solely upon the basis of activities protected by the First Amendment. The FISA Court has no statutory authority to examine the foundation of the FBI's specification or to reject the specification as unfounded. *See id.* § 1861(b)(2) & (c)(1).

26. Section 215 includes the following gag provision: "No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section." *See id.* § 1861(d). Section 215 gag orders are indefinite, and do not require the FBI to make a showing that secrecy is necessary in any particular case.

27. Defendant Attorney General John Ashcroft has refused to disclose publicly even the most basic information about the FBI's use of Section 215. He has refused to say, for example, how many times the provision has been used to obtain information from public libraries, how many times it has been used to obtain information about United States citizens or permanent residents, and how many times it has been used in response to a person's engagement in activity protected by the First Amendment.

28. Through a request submitted under the Freedom of Information Act, the American Civil Liberties Union obtained heavily redacted documents that indicate that the FBI has already used Section 215.

29. At a June 2003 hearing, Defendant Attorney General Ashcroft informed the House Judiciary Committee that it is his position that Section 215 could be used to obtain, among other things, library and bookstore records, computer files, education records, and even genetic information.

FACTUAL BACKGROUND

30. Based on their personal experiences and the government's own actions, plaintiffs have a well-founded belief that they and their members, clients, and constituents (hereinafter "members and clients") have been or are currently the targets of investigations conducted under Section 215. Because Section 215 does not require the government to provide notice to surveillance targets, and because it strictly gags recipients from disclosing that the FBI has sought or obtained information from them, plaintiffs and other innocent targets of FBI surveillance have no way to know with certainty that their privacy has been compromised.

31. The FBI has already targeted plaintiffs, their members, and their clients in a number of ways.

32. The FBI has sought information directly from some of the plaintiffs about their members and clients.

33. The FBI has sought information from some of the plaintiffs' members and clients directly, either during visits to their homes and businesses, or through numerous

registration and interview programs directed at Muslims of Arab and South Asian descent.

34. Plaintiffs have many members and clients who were required to register under the National Security Entry-Exit Registration System (NSEERS), an INS program that thus far has been applied almost exclusively to nationals of predominantly Arab and Muslim countries. Many individuals who appeared in good faith for registration were then detained by the INS for alleged immigration violations. The FBI also interviewed many of plaintiffs' members and clients of Arab, Muslim, and South Asian descent in March 2002. Finally, the FBI interviewed many of plaintiffs' members and clients of Iraqi descent in March 2003, as part of "Operation Liberty Shield."

35. During these interviews, many members were questioned about their religious and political beliefs, activities, and associations. Some of plaintiffs' members expressed opposition to the war in Iraq, to United States support for Israeli policies, and to other aspects of United States foreign policy. Plaintiffs' members and clients believe that the FBI may have selected them for investigation under Section 215 because of information obtained during these interviews.

36. The Attorney General stated publicly in November 2002 that the Justice Department had a "previously undisclosed intelligence program involv[ing] tracking thousands of Iraqi citizens and Iraqi Americans with dual citizenship."

37. The FBI is currently investigating a number of charities suspected of providing material support to Foreign Terrorist Organizations. Some of plaintiffs' members and clients contributed financially to these charities before the charities were accused of having provided material support.

38. Some of the plaintiffs and their members and clients have direct contacts with people whom the INS detained and the FBI interrogated after September 11th. The FBI routinely interrogated INS detainees, asking questions not only about the detainees' own immigration status, political views, religious beliefs, and foreign connections but also about the political views, religious beliefs, and foreign connections of the detainees' friends and family members.

39. Many of plaintiffs' members and clients emigrated to the United States from countries the government has accused of sponsoring terrorism, such as Syria and Iraq. Defendant Mueller has stated publicly that a "substantial" number of persons are under constant surveillance, particularly in communities like New York and Detroit, where plaintiffs have thousands of Arab-American members and clients.

40. Many of the plaintiffs directly serve Muslim communities, or have significant numbers of members or clients who are Muslim. Two of the plaintiffs, the Muslim Community Association of Ann Arbor and the Islamic Center of Portland, Masjed As-Saber, operate mosques.

41. Section 215 has caused some of plaintiffs' members and clients to be inhibited from publicly expressing their political views, attending mosque and practicing their religion, participating in public debate, engaging in political activity, associating with legitimate political and religious organizations, donating money to legitimate charitable organizations, exercising candor in private conversations, researching sensitive political and religious topics, visiting particular websites, and otherwise engaging in activity that is protected by the First Amendment to the United States Constitution.

Muslim Community Association of Ann Arbor

42. MCA is a non-profit, membership-based organization that owns and administers a mosque and an Islamic school, the Michigan Islamic Academy, in Ann Arbor, Michigan. Approximately 1000 people attend services at the mosque each Friday; as many as 2500 attend services on religious holidays. MCA employs approximately 20 people and has about 700 registered, dues-paying members.

43. Approximately 200 students are enrolled at the Michigan Islamic Academy, which offers classes from pre-K through 11th grade. In addition to offering the standard academic curriculum used in the State of Michigan for public schools, the school offers classes in Arabic language, Quranic recitation and Islamic Studies. The mission of the school is to provide students with the basic knowledge required to preserve their Islamic heritage, religion and cultural identity.

44. MCA has spent a significant amount of time, staff resources, and funds discussing the impact of September 11th and the Patriot Act on the civil rights of Muslims. It sponsored civil rights forums on January 26, 2002; April 14, 2002; October 13, 2002; and March 12, 2003. Each of these forums addressed the impact of the Patriot Act. The MCA has also sponsored numerous rallies and fundraisers related to the Rabih Haddad case; at these events, the Patriot Act was almost always discussed.

45. Because of the relationship between MCA, its members and leaders, and persons and organizations investigated, questioned, detained, or arrested since September 11th, MCA reasonably believes that the FBI has used or is currently using Section 215 to obtain records or personal belongings about it and its members, students, and constituents.

46. For example, the MCA, its leadership, and its members have been associated with Rabih Haddad. Rabih Haddad is a 41-year-old native of Lebanon who came legally to the United States and lived until recently in Ann Arbor with his wife and four children. He was an active member of MCA and a volunteer teacher at MCA's Michigan Islamic Academy. In 1992, he co-founded the Global Relief Foundation, a humanitarian organization which the federal government has accused of having provided material support for terrorism. In December 2001, Mr. Haddad was arrested on immigration charges. Though never accused of threatening or harming anyone, Mr. Haddad was denied bond and held in solitary confinement for months with almost no access to his family or the outside world. The INS commenced removal proceedings against him based on visa violations, and the government attempted to close the INS hearings to the press and public. The ACLU, the Detroit Free Press, Representative John Conyers and others successfully sued to open the hearings. Mr. Haddad was ultimately imprisoned for approximately nineteen months, and deported to Lebanon in July 2003. He was never charged with any crime.

47. Some MCA members founded the Free Rabih Haddad Committee in December 2001. The Free Rabih Haddad Committee supported the Haddad family during Mr. Haddad's imprisonment, raised money to assist in his defense, organized public demonstrations in support of Mr. Haddad, and organized a letter-writing campaign. The Free Rabih Haddad Committee continues to educate the public about the government's treatment of Mr. Haddad. The MCA itself also held numerous fundraisers and public rallies to protest Mr. Haddad's detention.

48. Almost all meetings of the Free Rabih Haddad Committee were held at the MCA. During his detention, Mr. Haddad placed weekly telephone calls to the MCA in order to speak with MCA leaders and members.

49. The MCA, its leadership, and its members have also been associated with Dr. Sami Al-Arian. In October 2002, Dr. Sami Al-Arian spoke at the MCA mosque on the "Eroding Status of Our Civil Liberties." Dr. Al-Arian is a Kuwaiti-born former professor at the University of South Florida. He was indicted in the Middle District of Florida in February 2003 for allegedly aiding and abetting terrorism in the occupied West Bank. The federal government has introduced evidence in the case that they obtained through wiretaps authorized under another Patriot Act amendment to FISA. Dr. Al-Arian's daughter, Layla Al-Arian, spoke about her father's case at MCA's mosque in March 2003.

50. Other MCA members and leaders have been individually targeted for investigation by the FBI.

51. For example, MCA member Homam Albaroudi was born in Syria and came to the United States in 1987. He received a Masters in Engineering from Missouri State University and a Ph.D. in Engineering from Oregon State University. He is now a United States citizen. He is married to a United States citizen and has three children, all United States citizens. He works as an engineer for a Fortune 100 company.

52. Mr. Albaroudi has been an active member of MCA since 1999. He was a member of the Michigan Islamic Academy's board of directors for 3 years.

53. Mr. Albaroudi has also been a member of CAIR's Michigan chapter for approximately three years.

54. In 1993, Mr. Albaroudi co-founded the Islamic Assembly of North America ("IANA"), a non-profit organization dedicated to educating the public about Islam. While he was associated with the organization, IANA organized conferences, published religious books, and supplied Qurans to incarcerated Muslims. Mr. Albaroudi served as IANA's Executive Director from the organization's founding in 1996 until 1997, when he stepped down from his position and ended his association with IANA because of personal differences with other IANA leaders. The FBI raided IANA's offices in February 2003, seizing computers and taking photographs of books. The computers contained information about Mr. Albaroudi. FBI agents also questioned IANA associates and ex-employees about Mr. Albaroudi, notwithstanding that his association with IANA ended in 1997.

55. Mr. Albaroudi was also a founder of the Free Rabih Haddad Committee. Mr. Albaroudi convened the initial meeting of the Committee on the premises of the MCA.

56. Mr. Albaroudi has twice been contacted by the FBI. On the first occasion, which was approximately four years ago, Mr. Albaroudi was on an employment-related consulting assignment in Indiana when the FBI came looking for him at his home in Michigan. When the FBI discovered that Mr. Albaroudi was not at home, they left their cards with Mr. Albaroudi's wife, asking that Mr. Albaroudi contact them when he returned. Mr. Albaroudi did so. The FBI did not pursue efforts to speak with Mr. Albaroudi after he informed them that he did not feel comfortable speaking with them without an attorney present.

57. The FBI contacted Mr. Albaroudi again in or about March 2003. On this occasion, the FBI agents who contacted him said that they had not singled him out but rather were interviewing many people in the area to find out whether anyone had learned of conspiracies against the United States. Mr. Albaroudi explained to the FBI that he would have contacted them of his own accord if he had learned of conspiracies against the United States. The FBI then asked Mr. Albaroudi about another co-founder of IANA, who had recently been arrested for an overdraft check and then detained on immigration charges. The FBI did not pursue efforts to speak with Mr. Albaroudi after he informed them that he did not feel comfortable speaking with them without an attorney present.

58. Mr. Albaroudi reasonably believes that, because of his religion, his ethnicity, his place of birth, his earlier leadership role in IANA, his leadership role in the Free Rabih Haddad Committee, and his membership and leadership role in MCA, the FBI has used or is currently using Section 215 to obtain his records and personal belongings.

59. MCA member Kristine Abouzahr was born in Lansing, Michigan in 1958. She is married and has five children, the eldest of whom is 21 and the youngest 9. Mrs. Abouzahr received a B.S. from Oklahoma State University in 1978 and an M.A. from Virginia Polytechnic Institute and State University in 1980. She moved to Michigan in 1986.

60. Mrs. Abouzahr has been a member of the MCA since 1986.

61. Mrs. Abouzahr taught at the Michigan Islamic Academy from 1990-1994, from 1995-1997, from 1999-2001, and during this past academic year. Mrs. Abouzahr's youngest daughter is currently a student at the Michigan Islamic Academy.

62. Mrs. Abouzahr serves on MCA's Outreach Committee, whose mandate is to educate Americans about Islam. As a member of the Outreach Committee, she has visited numerous local schools and community organizations to give presentations about Islam. Mrs. Abouzahr also serves informally as an advisor to Michigan Islamic Academy's new immigrant students and their parents who have questions about adjusting to life in the United States.

63. Mrs. Abouzahr is an active member of the Ann Arbor Area Committee for Peace (AAACP). As a member of that organization, Mrs. Abouzahr attended demonstrations against the Gulf War, against the Patriot Act, against the FBI's "voluntary" interview program, and in favor of a just peace between Israel and Palestine. Mrs. Abouzahr has also spoken publicly at demonstrations sponsored by AAACP and MCA, including at demonstrations in support of Rabih Haddad.

64. Mrs. Abouzahr is also an active member of the Free Rabih Haddad Committee. As one of the Committee's two Media Coordinators, she drafts press releases, speaks to the media, and organizes public demonstrations. She has also spoken publicly in support of Mr. Haddad. For example, in February 2002, after she had traveled to Washington, D.C., with Mr. Haddad's wife, she spoke at an informational forum organized and co-sponsored by the AAACP and the Free Rabih Haddad Committee to inform the local community about Haddad's case.

65. The Free Rabih Haddad Committee's post office box is registered in Mrs. Abouzahr's name.

66. Mrs. Abouzahr reasonably believes that, because of her religion, her leadership role in the Free Rabih Haddad Committee, her membership in AAACP, and

her membership and leadership role in MCA; the FBI has used or is currently using Section 215 to obtain her records and personal belongings.

67. MCA member Nazih Hassan was born in Lebanon in 1969. He emigrated to Canada in 1988 and became a Canadian citizen in 1993. Mr. Hassan received his B.Esc. from the University of Western Ontario in 1994.

68. Mr. Hassan came to the United States in 1994 to study at Eastern Michigan University. He received his M.S. in Computer Information Systems from that institution in 1997.

69. Mr. Hassan became a legal permanent resident in 2001. He is married and has three children, two of whom are United States citizens. Mr. Hassan now works as a technology consultant and resides in Ypsilanti, Michigan.

70. Mr. Hassan has been a member of the MCA since 1994. Since January 2002, he has served as MCA's President. At various times since 1995, he also served as Editor of MCA's newsletter, as MCA's Secretary, and as MCA's Vice President.

71. Mr. Hassan was a founder of the Free Rabih Haddad Committee. As one of the Committee's two Media Coordinators, he drafts press releases, speaks to the media, and organizes public demonstrations.

72. Mr. Hassan reasonably believes that, because of his religion, his ethnicity, his place of birth, his leadership role in the Free Rabih Haddad Committee, and his membership and leadership role in MCA, the FBI has used or is currently using Section 215 to obtain his records and personal belongings.

73. MCA also reasonably believes that it could be served with a Section 215 order. It then would have no ability to challenge the order before compromising the

privacy and free speech rights of its members. MCA maintains various records pertaining to its members, including records of members' names, telephone numbers, e-mail, home and business addresses, and citizenship status and national origin. MCA keeps records relating to members' marriages and divorces, and relating to members' family problems that MCA's Imam and Social Committee help resolve. MCA also keeps records documenting the use of zakat (members' charitable donations). The Michigan Islamic Academy also maintains a variety of educational and counseling records about its students. Finally, MCA has a variety of religious documents associated with the mosque and the Michigan Islamic Academy.

74. MCA has a policy of strictly maintaining the privacy of its records and routinely assures its members that any information they provide to MCA will be kept confidential. MCA's members rely on MCA's assurances that their records will be kept confidential.

75. Section 215 compromises MCA's ability to maintain the confidentiality of records pertaining to its members and students, and to protect individual members and students from harassment, threats, and violence. MCA has been the target of harassment since September 11th. For example, on some occasions after MCA President Nazih Hassan was quoted in newspaper articles, the MCA received several hate letters. After Mr. Hassan wrote a letter to the Ann Arbor News at the end of March 2003, an unknown individual or group placed hate fliers on cars outside the mosque. Were the confidentiality of MCA's records to be compromised and MCA's membership list to become public knowledge, MCA's individual members would be subjected to verbal harassment, threats, and even violence.

76. MCA's ability to keep its records confidential also allows MCA to protect its members and students from the possibility that the government will target them for their exercise of First Amendment rights, including their rights to free speech, free association, and free exercise of religion.

77. Because of the likelihood that the FBI is using provisions of the Patriot Act to target MCA, its leadership, and its members, some MCA members are afraid to attend mosque, to practice their religion, or to express their opinions about religious and political issues. Several people have told MCA leaders that they do not attend mosque for fear that the FBI is surveilling MCA and intends to investigate those who are associated with the organization.

American-Arab Anti-Discrimination Committee

78. ADC is a non-profit civil rights organization committed to defending the rights and promoting the rich cultural heritage of people of Arab descent. ADC has members and volunteer-based chapters in many states. It is headquartered in Washington, D.C., and has staffed offices in New York City, Detroit, San Diego, and San Francisco.

79. Since the passage of the Patriot Act, ADC has spent a significant amount of time, staff resources, and funds in advocating against the civil rights encroachments authorized by the Act. ADC has co-sponsored congressional briefings in Washington, D.C., and held town hall meetings throughout the country to educate the public about the Act. Most recently, ADC was a major co-sponsor of a national congressional briefing held on Capitol Hill on June 4, 2003. The briefing, which was attended by several prominent senators and representatives, featured testimony from immigrants who had

suffered civil rights violations after September 11th. On June 2, 2003, ADC co-sponsored another congressional staff briefing focusing on the Act and other post-September 11 Department of Justice initiatives. ADC staff members have spoken about the Patriot Act at over 150 conferences, seminars, and university events around the nation. Additionally, ADC's National Conventions for 2002 and 2003 included several panels discussing the Patriot Act and other government programs and policies implemented after the Patriot Act became law. ADC spokespeople, including Communications Director Hussein Ibish, are among the leading advocates in national media against the Patriot Act. Moreover, the ADC Legal Department provides routine assistance to anyone contacting ADC for help concerning law enforcement or other activities related to the Patriot Act. Finally, ADC's Legal Department is an active participant in coalition-based policy advocacy to amend or repeal parts of the Act.

80. ADC monitors the due process and equal protection rights of all Arab-Americans, including those who were detained on by the INS after September 11th and those who have been caught up in terrorism investigations.

81. For example, ADC and its members publicly condemned the use of secret evidence in the detention of Dr. Māzen Al-Najjar, formerly a University of South Florida professor. Though incarcerated for over three years, Dr. Al-Najjar was never charged with any criminal offense. He was ultimately deported for visa violations.

82. ADC and its members have also made public statements of concern about due process issues in the case of Rabi Haddad, a community leader in Ann Arbor, Michigan who was detained by the INS in December 2001, imprisoned for approximately

nineteen months, and ultimately deported in July 2003 without having been charged with any crime.

83. Because of the relationship between ADC, its members, and persons questioned, detained, or deported since September 11th, ADC reasonably believes that the FBI has used or is currently using Section 215 to obtain records and personal belongings about it and its members.

84. ADC also reasonably believes that it could be served with a Section 215 order. ADC would then would have no ability to challenge the order before compromising the privacy rights of its members. ADC maintains a variety of records about members, including their names and names of family members, home and business mailing addresses, phone numbers, email addresses, credit card information, and checking account information. ADC has a policy of maintaining the confidentiality of its members and their private information. ADC does not disclose membership numbers or any other information about members.

85. Section 215 compromises ADC's ability to maintain the confidentiality of records pertaining to its members, and to protect members from harassment, threats, and violence. ADC has documented a substantial increase in hate crimes, discrimination, and harassment against Arab-Americans since the September 11th attacks. Many of these incidents are described in the ADC publication, "Report on Hate Crimes and Discrimination Against Arab Americans: The Post-September 11 Backlash." Over 700 violent incidents occurred in the first nine weeks following the attack, including several murders. In the first year after the attacks, ADC documented over 80 cases in which airlines had discriminated against passengers who were perceived to be Arab. There

were also over 800 cases of employment discrimination against Arab-Americans, an approximately four-fold increase over previous annual rates, and numerous instances of denial of service, discriminatory service and housing discrimination. These numbers remain significantly above pre-September 11th levels today. Were the confidentiality of ADC's records to be compromised or ADC's full membership list to become public knowledge, ADC's members could risk harassment, threats, and even violence.

Arab Community Center for Economic and Social Services

86. ACCESS is a human services organization committed to the development of the Arab-American community in the United States. Its staff and volunteers serve low-income families, help newly arrived immigrants adapt to life in the United States, and educate Americans about Arab culture. ACCESS provides a wide range of social, mental health, educational, artistic, employment, legal and medical services. ACCESS has more than 2500 members and approximately 150 full-time staff.

87. ACCESS provides over seventy different programs to more than a hundred thousand people of all ethnic and religious backgrounds. In the last fiscal year, ACCESS provided more than 57,290 services in the area of social and legal services, more than 12,600 counseling and psychiatric services, more than 60,300 in health and health education services, and more than 55,600 employment and vocational services. ACCESS also provided more than 256,590 hours of educational and recreational services to youths and their parents, and sponsored cultural events and activities attended by many thousands of people.

88. For example, ACCESS runs a Community Health and Resources Center that offers a wide range of medical, public health, mental health and family counseling

services and programs. Its division of Psychosocial Rehabilitation for Survivors of Torture and Refugee Family Strengthening provides mental health services to torture victims and refugees. ACCESS also provides specialized services to victims of domestic violence, administers a breast and cervical cancer control program, and provides HIV/AIDS and STD education, counseling and testing. The Center's research division has twice sponsored a National Conference on Health Issues in the Arab Community.

89. ACCESS's Department of Social Services offers emergency food assistance, immigration services, and homelessness prevention programs. Its Department of Employment and Training offers a variety of job training programs, language instruction, and family acculturation services to help immigrants integrate into their new society. The Youth and Education Department provides after school homework assistance to students, special programs for at-risk youth, and recreation programs and teen dialogue opportunities for young people.

90. Because of the relationship between ACCESS, its members and clients, and persons questioned, detained, or deported since September 11th, ACCESS reasonably believes that the FBI has used or is currently using Section 215 to obtain records or other personal belongings about it and its members and clients.

91. Some of ACCESS's members and clients have been individually targeted for investigation by the FBI.

92. For example, ACCESS member Ahmad Ali Ghosn was born in Lebanon in 1965. He has been a legal permanent resident of the United States since 1993. Mr. Ghosn's application for naturalization has been pending for over seven years. Mr. Ghosn first submitted his application in June 1996. The INS later informed Mr. Ghosn that it

had lost the application and advised him to submit two duplicate applications. Mr. Ghosn did so. He received an acknowledgement notice from the INS in January 1998 – over five years ago. Since January 1998, the INS has required Mr. Ghosn to be fingerprinted on multiple occasions but it has never sought to schedule a naturalization interview.

93. The INS most recently required Mr. Ghosn to be fingerprinted in February 2002. When Mr. Ghosn appeared as he had been asked to, he was greeted not only by an INS criminal investigator but also by two FBI agents, who questioned him for over two hours about his associations with various individuals and charitable organizations in Lebanon. The FBI agents informed Mr. Ghosn that he could be naturalized if he cooperated with them, but that if he did not, his children would be seized by the government and placed in foster care. Mr. Ghosn answered the FBI's questions to the best of his ability but refused their request that he become an FBI or INS spy. He was not advised of his right to counsel.

94. Because of the FBI's actions, Mr. Ghosn reasonably believes that the FBI has used or is currently using Section 215 to obtain his records or other personal belongings.

95. ACCESS also reasonably believes that it could be served with a Section 215 order. It would then have no ability to challenge the order before compromising the privacy rights of its members and clients. ACCESS maintains a wide range of highly personal, sensitive records relating to the services it offers to clients. For example, the Community Health and Research Center maintains medical records for torture victims and refugees, and for breast cancer, mental health, and HIV/AIDS patients. It also

maintains files on domestic violence victims and family counseling clients. ACCESS routinely assures its clients that the information they provide will be kept confidential.

Bridge Refugee & Sponsorship Services

96. Bridge is an ecumenical, non-profit organization that helps refugees and asylum-seekers become and stay self-sufficient.

97. Bridge is affiliated with Church World Service ("CWS"), which is the relief, development, and refugee assistance ministry of 36 Protestant, Orthodox, and Anglican denominations in the United States, and with Episcopal Migration Ministries ("EMM"), which is the arm of the Episcopal Church that advocates for the protection of the refugees.

98. Bridge employs eight staff members and has offices in Knoxville, Chattanooga, and Bristol, Tennessee.

99. Bridge generally obtains clients in either of two ways. In some cases, a person residing in the United States asks Bridge to assist a relative whom the United States has granted refugee status but who has not yet arrived in the United States. In these cases (called "family reunification" cases), Bridge begins working with the refugee's family while the refugee is still outside the United States. In other cases, Bridge is assigned refugees' files by affiliate organizations such as CWS and EMM. These cases (called "free" cases) usually involve refugees who do not have family in the United States.

100. Historically, Bridge has served approximately 200 new refugees and asylum seekers in a year. Bridge's current caseload, which includes refugees who arrived in the United States over the last five years, includes approximately 500 files.

101. Bridge ordinarily serves its clients through individual sponsors, whom Bridge recruits from local churches, mosques, and synagogues.

102. Sponsors sign confidentiality agreements. Bridge staff explain and review the confidentiality agreement in sponsor training sessions.

103. Bridge provides its clients with a broad spectrum of resettlement services. For example, Bridge staff and sponsors ensure that new refugees have accommodations, furniture, clothing, and food; accompany new refugees to the Department of Health for medical examinations and immunizations; provide English language tutors to refugees who require them; ensure that refugee children enroll in school; provide cultural counseling to educate new refugees about American customs; assist new refugees in finding employment as quickly as possible; assist new refugees in complying with immigration requirements; assist refugees in applying for permanent residence and citizenship; direct refugees to social services provided by other organizations or by the federal and state governments; and counsel refugees about personal problems, including substance abuse, sexual abuse, discrimination at work or school, domestic violence, family planning, and divorce.

104. Bridge maintains various records pertaining to its clients, including records of clients' names, telephone numbers, and residential addresses. Bridge also keeps records of its clients' dates of arrival in the United States.

105. In many cases, Bridge's files also include case notes taken by Bridge staff. Case notes may document medical conditions from which the client has suffered in the past or that the client suffers currently. Case notes may also document the nature of the persecution that the client faced in her home country.

106. In some cases, clients consult Bridge staff about personal problems, including substance abuse, sexual abuse, discrimination at work or school, domestic violence, family planning, and divorce. In one case, for example, Bridge counseled a client about a venereal disease that she had acquired as a result of rape by a soldier. In another case, Bridge counseled an elderly client who was being mistreated by his daughters. Bridge's case notes include documentation of conversations relating to these and similarly intimate, personal problems.

107. In many cases, Bridge's refugee clients can obtain the assistance they need only from Bridge. There is no other resettlement services organization in East Tennessee whose staff have the relevant language and professional skills. When Bridge's clients decide that they cannot afford to entrust their personal information to Bridge, those clients generally do not obtain the help that they need from anywhere. They simply deal with their problems — including serious medical and personal problems — on their own.

108. Bridge is concerned that Section 215 compromises its ability to maintain the confidentiality of its clients' records. Bridge regularly assures its clients that the information they provide will be kept confidential, and explains that, under state law, the confidentiality of the information that clients provide is protected by a social worker privilege. Bridge provides its clients with a confidentiality agreement that assures clients that Bridge will disclose their records only "to facilitate the continuation of proper medical treatment and social services."

109. Bridge reasonably believes that it could be served with a Section 215 order. Bridge would then would have no ability to challenge the order before compromising the privacy rights of its members.

110. The FBI has approached Bridge for information about its clients on at least two occasions. In early November 2002, the FBI approached Bridge to ask it to disclose all records relating to its Iraqi-born clients. Bridge declined to disclose the records because the records included sensitive, personal information, including medical information.

111. On November 12, 2002, Bridge was served with a Subpoena To Testify Before Grand Jury, ordering the production of "Any and all records of Bridge . . . relating to any and all Iraqi-born people who have been assisted by Bridge Refugee and Sponsorship Services, Inc., including records that provide the name, address, telephone number, employer, and personal circumstances of such persons." Bridge moved to quash the subpoena but withdrew its motion when the FBI agreed not to seek more information than Bridge's clients would already have provided to the INS. The FBI made clear, however, that it might eventually demand more information. The FBI did not indicate what form such a demand might take.

112. Bridge client Muwafa Albaraqi was born in 1968 in Najaf, Iraq, where he lived until 1991. In 1991, at the encouragement of the United States, Mr. Albaraqi participated in an uprising against the government of Saddam Hussein. Although the uprising was successful in Najaf, American support did not materialize and ultimately the city fell again to the Iraqi Republican Guard. Those who had participated in the uprising were labeled traitors and were tortured, imprisoned, or killed. Mr. Albaraqi fled to Saudi Arabia.

113. Mr. Albaraqi lived in a United Nations-administered refugee camp in Saudi Arabia from March 1991 to September 1994. He applied for political asylum in the United States while living at the camp.

114. Mr. Albaraqi came to the United States in September 1994. His file, which was initially assigned to another refugee organization, was transferred to Bridge when Mr. Albaraqi decided that he would reside in Tennessee, where he had friends.

115. Bridge assisted Mr. Albaraqi in adjusting to life in Tennessee. For example, Bridge showed Mr. Albaraqi around Knoxville, pointing out where he could buy groceries and clothing, and showed him how to use the bus system. Bridge helped Mr. Albaraqi find a place to live, paid his first month's rent and utilities, and bought him groceries for his first week in the country. Bridge also helped Mr. Albaraqi apply for federal assistance, including food stamps and social security. Bridge accompanied Mr. Albaraqi to the Department of Health, where Mr. Albaraqi was given a medical examination and immunizations. Bridge also helped Mr. Albaraqi with his application for permanent residence and, eventually, his application for citizenship.

116. Mr. Albaraqi became a United States citizen in 1999. Mr. Albaraqi now works as a check-out clerk at a grocery store in Knoxville, Tennessee. He is also a part-time student in electrical engineering at the University of Tennessee.

117. The FBI came to Mr. Albaraqi's workplace in January 2003, stating that they wanted to talk to him. Mr. Albaraqi was not told that the interview was optional or voluntary or that he had a right to contact an attorney and have an attorney present at the interview.

118. During the interview, the FBI asked, among other questions, whether anyone associated with the Iraqi government had asked him to engage in terrorism against American targets; what he would do if an Iraqi agent asked him to engage in terrorism; and whether he might act differently if the Iraqi agent cut off his brother's finger and sent it to him in the mail.

119. Mr. Albaraqi would not have sought Bridge's assistance for sensitive, personal matters had he thought that the FBI could easily access Bridge's records under Section 215. Based on his own experience as a refugee, he believes that other refugees will be less likely to seek help from Bridge because the FBI can obtain their sensitive, personal records even when they have done nothing wrong.

Council on American-Islamic Relations

120. CAIR is a non-profit grassroots organization dedicated to enhancing the public's understanding of Islam and Muslims. CAIR is the largest Islamic civil liberties organization in the United States. CAIR's national office in Washington, D.C., has a permanent staff of about 25 people. Approximately the same number of people are employed by CAIR's state and local chapters.

121. Since the passage of the Patriot Act, CAIR has spent a significant amount of time, staff resources, and funds in advocating against the civil rights encroachments authorized by the Act. CAIR hosts an annual conference each March. At both the 2002 and 2003 conferences, multiple speakers explained the Patriot Act and discussed its import for Muslims in the United States. CAIR hosts an annual dinner each October. At both the 2001 and 2002 dinners, speakers explained the Patriot Act and discussed its import for Muslims in the United States. CAIR regularly distributes e-mail "Action

Alerts" to members and others who have subscribed to CAIR's Action Alert list. Since the Patriot Act became law, CAIR has distributed numerous Action Alerts related to the Patriot Act. CAIR has also issued numerous news releases related to the Patriot Act.

122. CAIR monitors the due process and equal protection rights of all Muslims living in the United States, including those detained on immigration charges after September 11th and those caught up in terrorism investigations. In 2002, CAIR issued a 54-page "Civil Rights Report" that, among other things, examined the impact that "anti-terrorism" policies, including the Patriot Act, had had on the civil liberties of American Muslims. CAIR issued a similar Civil Rights Report in 2001 and issued a new Civil Rights Report in July 2003.

123. Because of the relationship between CAIR, its members, and persons questioned, detained, or deported since September 11th, CAIR reasonably believes that the FBI is currently using Section 215 to obtain records and personal belongings of CAIR and its members.

124. For example, CAIR member Magda Bayoumi was born in Cairo, Egypt, in 1956. She came to the United States in 1977 and became a United States citizen in 1988. Mrs. Bayoumi has been a member of CAIR for approximately four years.

125. Mrs. Bayoumi is married and has three children, of whom the youngest is 10 and the eldest 17. Mrs. Bayoumi's husband was also born in Cairo, Egypt. He became a United States citizen in 1991. All of Mrs. Bayoumi's children are United States citizens. Mrs. Bayoumi and her family live in Syracuse, New York.

126. Mrs. Bayoumi works as a volunteer for several community organizations. She currently chairs the board of the Parents Advisory Group for the Special-Education

Director of the Syracuse School District. She serves as a board member of the Central New York Parent's Coalition for Children With Special Needs. She co-founded and serves on the board of the of Autism Support Group. She founded and serves on the board of the Ed Smith School's Support Group for Children With Special Needs.

127. Mrs. Bayoumi and her husband co-founded and serve on the board of the Central New York Chapter of the American Muslim Council, an organization that was established in 1990 to increase the effective participation of American Muslims in the political process.

128. Two FBI agents came to Mrs. Bayoumi's home on February 26, 2003. They first informed Mrs. Bayoumi that they wanted to question her husband. When Ms. Bayoumi told the agents that her husband was not at home, however, they began to question her instead.

129. The FBI's questioning focused on a donation that Mrs. Bayoumi and her husband had made to a charity called Help the Needy. Mrs. Bayoumi and her husband had donated several hundred dollars to the organization the previous year.

130. The agents asked Mrs. Bayoumi how much money she and her husband had contributed to the charity, whether she had attended a dinner that Help the Needy had recently hosted, whether she knew what the donation was being used for, and whether she would be upset if the money had been used to build a mosque. Mrs. Bayoumi told the FBI that she and her husband had donated a few hundred dollars to the charity in each of the previous few years, had attended the recent dinner, and had assumed that the donation would be used to provide food and medicine for needy people in Iraq.

131. The FBI did not inform Mrs. Bayoumi how they had learned that she and her husband had made a donation to Help the Needy.

132. On the same day that the FBI questioned Mrs. Bayoumi, the Department of Justice announced that a federal grand jury in Syracuse, New York, had returned an indictment charging Help the Needy and four individuals associated with it of transferring funds to persons in Iraq without having obtained the proper license. While Help the Needy was not accused of having providing anything other than humanitarian aid to people living in Iraq, the Justice Department's press release accused Help the Needy of attempting to undermine the President's efforts "to end Saddam Hussein's tyranny and support for terror."

133. Mrs. Bayoumi reasonably believes that because of her religion, her ethnicity, and her earlier support for Help the Needy, the FBI has used and is currently using Section 215 to obtain her records and other personal belongings.

134. CAIR also reasonably believes that it could be served with a Section 215 order. CAIR would then would have no ability to challenge the order before compromising the privacy rights of its members. CAIR maintains a variety of records about members, including their names, home and business mailing addresses, phone numbers, email addresses, credit card information, and checking account information. CAIR has a policy of maintaining the confidentiality of its members and their private information. CAIR does not disclose membership numbers or any other information about individual members.

135. Section 215 compromises CAIR's ability to maintain the confidentiality of records pertaining to its members, and to protect members from harassment, threats, and

violence. CAIR has documented a substantial increase in hate crimes, discrimination, and harassment against Muslim and Arab-Americans since the September 11th attacks. Many of these incidents are described in CAIR's 2001, 2002, and 2003 Civil Rights Reports. Were the confidentiality of CAIR's records to be compromised and CAIR's membership list to become public knowledge, CAIR members could risk harassment, threats, and even violence.

Islamic Center of Portland, Masjed As-Saber

136. The Islamic Center of Portland, Masjed As-Saber ("ICPMA"), is a non-profit organization that owns and administers a mosque known as Masjed As-Saber and an Islamic school known as the Islamic School of Portland. Approximately 450 people attend services at the mosque each Friday; as many as 3500 attend services on religious holidays. ICPMA employs approximately 16 people. Approximately 60 students are enrolled at the school.

137. Because of the relationship between ICPMA, its community members and leaders, and persons and organizations investigated, questioned, detained, or arrested since September 11th, ICPMA reasonably believes that the FBI has used or is currently using Section 215 to obtain records and personal belongings pertaining to it and its community members and students.

138. Some ICPMA community members have been individually targeted for investigation by the FBI.

139. In October, 2002, a federal grand jury in the District of Oregon indicted six individuals and charged them with various counts of conspiracy to wage war against the United States and to provide material support to Al Qaeda; a seventh individual was

indicted on similar charges in April 2003. A trial is currently scheduled for January 2004 in this case, which is known as the "Portland 7" case. Some of the defendants, Jeffrey Leon Battle, Patrice Lumumba Ford, and Habis Abdulla al Saoub, attended the ICPMA. In an affidavit submitted in support of the indictment of the defendants, Police Officer Thomas W. McCartney stated that a wired informant recorded conversations inside the Islamic Center of Portland, Masjed As-Saber, on June 6, 2002. The electronic surveillance was authorized under another Patriot Act amendment to FISA. The affidavit also states that the government obtained a number of records relating to the investigation. The affidavit does not state the legal authority utilized in obtaining these records. The government has stated publicly that the investigation into the alleged conspiracies is ongoing.

140. The FBI has also sought records from ICPMA. In March 2003, the ICPMA was served with a subpoena seeking financial records related to the defendants and their spouses in the Portland 7 case. ICPMA retained lawyers who moved to quash the subpoena because of the impact on the privacy rights of ICPMA's constituents, but was ultimately required to disclose the records. Some of ICPMA's constituents are now afraid to donate to ICPMA because they fear their donations will provoke FBI investigation and harassment. The FBI has also served subpoenas to over 25 people in the Portland area, some of whom attend ICPMA and other local mosques. The FBI has interviewed some ICPMA community members and has asked questions about other worshipers and their political and religious views.

141. In addition, some of ICPMA's leaders appear to be under investigation by the FBI but have not been charged with any crime.

142. For example, ICPMA president Alaa Abunijem was born in Saudi Arabia and came to the United States in 1989. He became a U.S. citizen in 1996. Mr. Abunijem is married to a U.S. citizen and has four children. He holds a B.S. degree in Electrical Engineering and an M.S. in Engineering and Technology Management. He currently works as an engineer for a Fortune 100 company, and has lived in Portland, Oregon, since 1999.

143. On December 17, 2002, Mr. Abunijem was stopped at the Seattle airport by U.S. Customs and questioned by both U.S. customs and FBI officials regarding the purpose of his trip to Saudi Arabia. The officials searched his documents, business cards, and credit cards for thirty minutes before returning them to him. On his return from Saudi Arabia on January 9, 2003, his luggage and documents were searched for over an hour and a half, and he was questioned by officials about his trip.

144. On February 26, 2003, an FBI agent called Mr. Abunijem at his work place and questioned him about a donation he had made to a charity called Help the Needy. Mr. Abunijem had made donations of several hundred dollars to the organization over the past few years. The FBI did not inform Mr. Abunijem how they had learned that he made a donation to Help the Needy. Mr. Abunijem told the FBI agent that he did not feel comfortable talking to the FBI without a lawyer.

145. On the same day that the FBI questioned Mr. Abunijem, the Department of Justice announced that a federal grand jury in Syracuse, New York, had returned an indictment charging Help the Needy and four individuals associated with it of transferring funds to persons in Iraq without having obtained the proper license. While Help the Needy was not accused of having providing anything other than humanitarian

aid to people living in Iraq, the Justice Department's press release accused Help the Needy of attempting to undermine the President's efforts "to end Saddam Hussein's tyranny and support for terror."

146. Since 1999, Mr. Abunijem has served as a board member of the Islamic Assembly of North America ("IANA"), a non-profit organization dedicated to educating the public about Islam. IANA organizes conferences, publishes religious books, and supplies Qurans to incarcerated Muslims. The FBI raided IANA's offices in Michigan in or about February 2003, seizing computers and taking photographs of books. The computers contained information about Mr. Abunijem. The government has not charged IANA with any crime, but has arrested one of the organization's former presidents, Bassem K. Khafagi, on federal bank fraud charges. Assistant U.S. Attorney Terry Derden of Boise, Idaho has stated publicly that "the investigation could expand to other directors and Islamic Assembly employees."

147. Mr. Abunijem has not been charged with any crime and strongly maintains his innocence.

148. Mr. Abunijem reasonably believes that because of his religion, his ethnicity, his place of birth, his leadership role in ICPMA and IANA, and his donations to Help the Needy, the FBI is currently using Section 215 to obtain his records and personal belongings.

149. ICPMA reasonably believes that it could be served with a Section 215 order. It would then have no ability to challenge the order before compromising the privacy rights of its members. ICPMA maintains a variety of records about community members, including their names and the names of family members, home and business

mailing addresses, phone numbers, email addresses, credit card information, and checking account information. ICPMA also retains records of services it provides to community members, including Islamic marriage contracts, and records of divorce proceedings and financial assistance given to needy families. The Islamic School of Portland retains health, financial and educational records pertaining to all of its students and staff. ICPMA has a policy of maintaining the confidentiality of all records pertaining to its community members, staff and students.

150. Section 215 compromises ICPMA's ability to maintain the confidentiality of its records, and to protect community members and students from harassment, threats, and violence. Since the September 11th attacks, ICPMA community members and other Arab-Americans have repeatedly been the target of harassment. Were the confidentiality of ICPMA's records to be compromised and ICPMA's community list or other records to become public knowledge, ICPMA's community members and students could risk verbal harassment, threats, and even violence.

151. ICPMA's ability to keep its records confidential also allows ICPMA to protect its community members from the possibility that the government will target them for their association with ICPMA, including their rights to free speech, free association, and free exercise of religion.

152. Because ICPMA community members believe that the FBI is currently using provisions of the Patriot Act to target ICPMA, and because the FBI has recorded conversations and services inside the mosque and sought records from ICPMA, many ICPMA community members are afraid to attend mosque, practice their religion, or express their opinions about religious and political issues.

CAUSES OF ACTION

153. Section 215 violates the Fourth Amendment by authorizing the FBI to execute searches without criminal or foreign intelligence probable cause.

154. Section 215 violates the Fourth Amendment by authorizing the FBI to execute searches without providing targeted individuals with notice or an opportunity to be heard.

155. Section 215 violates the Fifth Amendment by authorizing the FBI to deprive individuals of property without due process.

156. Section 215 violates the First Amendment by categorically and permanently prohibiting any person from disclosing to any other person that the FBI has sought records or personal belongings.

157. Section 215 violates the First Amendment by authorizing the FBI to investigate individuals based on their exercise of First Amendment rights, including the rights of free expression, free association, and free exercise of religion.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that the Court:

1. Declare that Section 215 is unconstitutional under the First, Fourth, and Fifth Amendments.
2. Permanently enjoin Defendants from using Section 215.
3. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412.
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Dated: July 30, 2003

FEDERAL BUREAU OF INVESTIGATION
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FEDERAL BUREAU OF INVESTIGATION

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DATE 08-15-2005 BY 65179 DMH / JHF

Precedence: IMMEDIATE

Date: 06/19/02

To: All Divisions

Attn: Assistant Director;
SAC;
Legat
CDC

From: Office of the General Counsel
Investigative Law Unit, Room 7326

b2

Contact: Investigative Law Unit, [REDACTED]

Approved By: Parkinson Larry R
Steele Charles M

[REDACTED]

b6

Drafted By: [REDACTED]

b7C

Case ID #: 66F-HQ- 1085160(Pending)

Title: NEW LEGISLATION
PATRIOT ACT OF 2001
PROVISIONS ADDRESSING INVESTIGATIVE ISSUES

Synopsis: To supplement guidance previously provided on the USA PATRIOT ACT of 2001 by highlighting provisions of the USA PATRIOT Act of 2001 which are of the most immediate interest to FBI investigations.

Reference: 66F-HQ-A1247863 Serial 70
66F-HQ-A1247863 Serial 71
66F-HQ-A1323588 Serial 364

Details:

Background

On October 26, 2001, the President signed the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (otherwise referred to as the "USA PATRIOT Act" or "Patriot Act") which enhances many investigative tools available to the FBI. Over the last several months, the Office of the General Counsel (OGC) has provided guidance to the field on this Act in the form of e-mails, ECs, and presentations/training. Among the documents provided are a detailed section-by-

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section analysis of certain provisions of the Act;¹ two separate ECs prepared by OGC's National Security Law Unit, dated October 26, 2001, entitled "NEW LEGISLATION, REVISIONS TO FCI/IT LEGAL AUTHORITIES, FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA)" and "NEW LEGISLATION, REVISIONS TO FBI/IT LEGAL AUTHORITIES, NATIONAL SECURITY LETTERS"; and an EC prepared by OGC's Legal Forfeiture Unit, dated January 11, 2002, entitled "ASSET FORFEITURE MATTER." The purpose of this communication is to consolidate into one document the guidance previously provided and to highlight those provisions of the Patriot Act of greatest interest to FBI investigative efforts.

This EC has been broken down into three sections. Section I, Investigative Tools, addresses the provisions which modify, amend, or create investigative tools which may apply to many types of investigations. Section II, Money Laundering, highlights some of the new crimes and investigative tools aimed at the financial networks of criminal enterprises. The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 was incorporated into the Patriot Act and was intended to significantly increase the United States' ability to combat the financing of terrorism. This section of the EC is only intended to summarize some of the highlights of the Act. Additional, more comprehensive guidance will be forthcoming. Section III, New Terrorism Offenses, summarizes some of the important changes in the criminal statutes regarding terrorist offenses. The forfeiture provisions, information sharing provisions, and other national security related provisions were addressed in detail in the aforementioned ECs and therefore will not be covered by this EC.

Many of the investigative tools provided in the Patriot Act are governed by a sunset provision which will result in their expiration on December 31, 2005 unless renewed by Congress.² In order to be prepared to justify their renewal, offices are encouraged to keep records of the effective use of these tools. Important information to be maintained includes both the number of times the investigative tool was effectively used and specific information on noteworthy cases.

¹This document was prepared by the Department of Justice and provided via e-mail to all Chief Division Counsels on October 30, 2001.

²Title 3 of the Patriot Act, entitled the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, has a slightly different sunset provision in that it will only expire if Congress enacts a joint resolution containing specific language. The result is that the provisions will continue unless Congress acts otherwise.

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I. Investigative Tools

Information from Communications Providers

Voice Mail - Law enforcement can now obtain all voice mail which is stored by a communications provider, including unopened voice mail, using the procedures set forth in 18 U.S.C. §2703 (such as a search warrant). This also applies to other wire communications as defined by the statute. Voice messages stored and in the possession of the user, such as an answering machine, are not covered by this statute. [REDACTED]

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[REDACTED] This tool is set to expire under the sunset provision.
See 18 U.S.C. § 2510; 18 U.S.C. § 2703.

Basic Subscriber Information - The list of information law enforcement can obtain with a subpoena was expanded to include records of session times and durations, any temporarily assigned network address, and the means and source of payment that a customer uses to pay for his/her account with a communications provider. 18 U.S.C. § 2703(c).

Nationwide Search Warrants for E-mail - Courts with jurisdiction over an investigation can now issue a search warrant with nationwide jurisdiction to compel the production of information held by a service provider, such as unopened e-mail. Previously, the search warrant had to be issued by a court in the district where the service provider was located. This tool is set to expire under the sunset provision. 18 U.S.C. § 2703.

Clarification of the Cable Act - In the past there were two statutory standards for privacy protection: one governing cable service (47 U.S.C. § 551, the "Cable Service Act"), and the other governing telephone and Internet privacy (18 U.S.C. § 2510, *et seq.* [wiretap statute], 18 U.S.C. § 2701, *et seq.* [ECPA], 18 U.S.C. § 3121 *et seq.* [pen/trap statute]). This opened the door for cable companies which provide telephone and Internet services to argue that the ECPA, wiretap, and pen/trap statutes did not apply to them. The Patriot Act clarified this issue by stating that the ECPA, wiretap, and pen/trap statutes govern disclosures by cable companies that relate to the provision of communication services. See 47 U.S.C. § 551(c)(2)(D).

Voluntary Disclosures - The law now explicitly permits, but does not require, a service provider to disclose to law enforcement either content or non-content customer records in emergencies involving an immediate risk of death or serious physical injury to any person. This voluntary disclosure, however, does not create an affirmative obligation to review customer communications in search of such imminent dangers. The Act also allows a communications service provider to disclose non-content records to protect their rights and property. This will most often be used when the communications service provider itself is a victim of computer

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hacking. This provision will expire under the sunset provision. See 18 U.S.C. § 2702(b) & (c)(3); 18 U.S.C. § 2703(c)(2)(F).

Electronic Surveillance

Expanded Predicates for Title III - The predicate offenses for Title III were expanded to include crimes relating to chemical weapons (18 U.S.C. § 229), terrorism (18 U.S.C. §§ 2332, 2332a, 2332b, 2332d, 2339A, and 2339B), and felony violations of computer fraud and abuse (18 U.S.C. § 1030). This is set to expire under the sunset provision. See 18 U.S.C. § 2516.

Nationwide Effect of Pen/Trap Orders - The Act amends the pen/trap statute to give federal courts the authority to compel assistance from any provider of communication services in the United States whose assistance is appropriate to effectuate the order. See 18 U.S.C. § 3127(2).

For example, a federal prosecutor may obtain an order to trace calls made to a telephone within the prosecutor's local district. The order applies not only to the local carrier serving that line, but also to other providers (such as long-distance carriers and regional carriers in other parts of the country) through whom calls are placed to the target telephone. In some circumstances, the investigators may have to serve the order on the first carrier in the chain and receive from that carrier information identifying the communication's path to convey to the next carrier in the chain. The investigator would then serve the same court order on the next carrier, including the additional relevant connection information learned from the first carrier; the second carrier would then provide the connection information in its possession for the communication. The investigator would repeat this process until the order had been served on the originating carrier who was able to identify the source of the communication.

When prosecutors apply for a pen/trap order using this procedure, they generally will not know the name of the second or subsequent providers in the chain of communication covered by the order. Thus, the application and order will not necessarily name these providers. The amendments to section 3123 therefore specify that, if a provider requests it, law enforcement must provide a "written or electronic certification" that the order applies to that provider. OGC will provide additional guidance on language for such certification in the near future.

Intercepting Communications of Computer Trespassers - The wiretap statute was amended to explicitly provide victims of computer attacks the ability to invite law enforcement into a protected computer to monitor the computer trespasser's communications. In the past, the law was ambiguous on this point. Before monitoring can occur, however, four requirements must be met. First, consent from the owner or operator of the protected computer must be obtained. Second, law enforcement must be acting pursuant to an ongoing investigation. Both criminal and

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intelligence investigations qualify, but the authority to intercept ceases at the conclusion of the investigation. Third, law enforcement must have reasonable grounds to believe that the contents of the communication to be intercepted will be relevant to the ongoing investigation. And fourth, investigators must only intercept the communications sent or received by trespassers. Thus, this section would only apply where the configuration of the computer system allows the interception of communications to and from the trespasser, and not the interception of non-consenting users authorized to use the computer. Additionally, based on the definition of a "computer trespasser," communications of users who have a contractual relationship with the computer owner may not be monitored, even if their use is in violation of their contract terms (i.e. spammers). This is set to expire under the sunset provision. See 18 U.S.C. § 1030(e)(2); 18 U.S.C. § 2510 (20) & (21); 18 U.S.C. § 2511(2)(i).

Pen Register/Trap and Trace Reporting Requirement - The statute created a new reporting requirement whenever the government uses its own pen register or trap and trace equipment on a packet-switched data network of an electronic communications service to the public. While this provision was aimed at the use of the DCS-1000 (earlier versions were known as Carnivore), it will also apply to the use of other government owned equipment/software, such as Etherpeek, on a service provider's network. While additional detailed guidance will be forthcoming, this new requirement imposes a duty to maintain records relating to the use of this equipment and to file these records with the court which authorized the pen register or trap and trace. See 18 U.S.C. § 3123(a)(3).

OPR Inquiry and Civil Liability for Unauthorized Disclosures - If a court, appropriate department, or agency, 1) finds that the government violated the wiretap statute (18 U.S.C. § 2520, *et seq.*) or the Electronic Communications Privacy Act (ECPA codified at 18 U.S.C. § 2701, *et seq.*); and 2) seriously questions if a government employee acted willfully or intentionally in such violation, the statute now requires that an OPR inquiry be initiated to determine if disciplinary action is warranted. The Department of Justice Inspector General will be notified of the results of the inquiry, including justification for the outcome. Violations warranting an OPR inquiry include improper disclosure of information obtained pursuant to Title III, ECPA, a pen register/trap and trace order, and national security letters under 18 U.S.C. § 2709. The United States is now civilly liable for certain violations of FISA [Section 106(a) codified at 50 U.S.C. § 1806(a) (the use of information in the ELSUR context), Section 305(a) codified at 50 U.S.C. § 1825(a) (the use of information in the physical search context), and Section 405(a) codified at 50 U.S.C. § 1845(a) (the use of information in the pen register/trap and trace context)], the wiretap statute, and ECPA with minimum damages awarded at \$10,000 plus legal fees. See 18 U.S.C. § 2520(f) & (g); 18 U.S.C. § 2707(d) & (g); and 18 U.S.C. § 2712.

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Search Warrants

Delayed Notice for Search Warrants - The Act created a uniform statutory standard authorizing courts to delay the provision of required notice if the court finds "reasonable cause" to believe that providing immediate notification of the execution of the warrant may have an adverse result as defined by 18 U.S.C. § 2705 (including endangering the life or physical safety of an individual, flight from prosecution, evidence tampering, witness intimidation, or otherwise seriously jeopardizing an investigation or unduly delaying a trial). The Act provides for the giving of notice within a "reasonable period" of a warrant's execution, which period can be further extended by a court for good cause. See 18 U.S.C. § 3103a.

Single Jurisdiction Search Warrants for Terrorism - In domestic terrorism (as defined within the act) or international terrorism cases, a search warrant may be issued by a magistrate judge in any district in which activities related to the terrorism have occurred for a search of property or persons located within or outside of the district. See Fed. R. Crim. P. 41(a). U.S. Attorneys' Offices had been advised to coordinate all search warrants in the investigation into the September 11 terrorist attacks with the DOJ Terrorism and Violent Crimes Section in order to avoid duplication of effort and prevent inadvertent interference with ongoing investigations in another district. [REDACTED]

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Miscellaneous Tools

Obtaining Financial Records and Consumer Reports - Section 358 of the Act amended the Right to Financial Privacy Act and the Fair Credit Reporting Act to provide for the ability to obtain financial records or consumer reports related to "intelligence or counterintelligence activity, investigation or analysis related to international terrorism." See 31 U.S.C. § 5311; 12 U.S.C. § 3412(a).

DNA Predicates - Section 503 extends DNA sample collection to all federal offenders convicted of the types of offenses that are likely to be committed by terrorists (as set forth in 18 U.S.C. § 2332b(g)(5)(B)) or any crime of violence (as defined in 18 U.S.C. § 16). See 42 U.S.C. § 14135a(d)(2).

Emergency Assistance from DOD - The Act broadened the Attorney General's authority to request assistance from the Secretary of Defense in emergency situations involving weapons of mass destruction. See 18 U.S.C. § 2332e.

Educational Records - Law enforcement can now obtain educational records held by an educational agency or institution if they are relevant to an authorized investigation of domestic or international terrorism or other offenses found under 18 U.S.C. § 2332b(g)(5)(B).

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Assistant Attorney General approval is required. This includes individually identifiable information which may be in the possession of the National Center for Education Statistics. See 20 U.S.C. § 1232g; 20 U.S.C. § 9007.

Expanded Foreign Jurisdiction - The special maritime and territorial jurisdiction of the United States explicitly is extended to U.S. diplomatic and consular premises and related private residences overseas for offenses committed by or against a U.S. national. This clarified inconsistent prior caselaw to establish that the United States may prosecute offenses committed in its missions abroad, by or against its nationals. The provision explicitly exempts offenses committed by members or employees of the U.S. armed forces and persons accompanying the armed forces, who are covered under a provision of existing law, 18 U.S.C. § 3261(a). See 18 U.S.C. § 7.

Expansion of the Computer Fraud and Abuse Act (18 U.S.C. § 1030) - The Act included a variety of modifications to strengthen the criminal statute used most often in computer hacking cases (18 U.S.C. § 1030). The Patriot Act increases penalties for hackers who damage protected computers (from a maximum of 10 years to a maximum of 20 years); clarifies the *mens rea* required for such offenses to make explicit that a hacker need only intend damage, not a particular *type* of damage; adds a new offense for damaging computers used for national security or criminal justice purposes; expands the coverage of the statute to include computers in foreign countries so long as there is an effect on U.S. interstate or foreign commerce; counts state convictions as "prior offenses" for the purpose of recidivist sentencing enhancements; and allows losses to several computers from a hacker's course of conduct to be aggregated for purposes of meeting the \$5,000 jurisdictional threshold. See 18 U.S.C. § 1030.

II. Money Laundering

New Offenses

Bulk Cash Smuggling - The Act makes it an offense to smuggle more than \$10,000 in currency into or out of the United States with the intent to evade the CMIR reporting requirement. The House Report specifically states that this provision will apply to conduct occurring before the effective date of the Act. 31 U.S.C. § 5332.

Money Transmitting Businesses - The scope of 18 U.S.C. § 1960 is expanded to include any business, licensed or unlicensed, that involves the movement of funds that the defendant knows were derived from a criminal offense, or were intended to be used "to promote or support unlawful activity."

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It is already an offense under Sections 1956 and 1957 for any person to conduct a financial transaction involving criminally derived property. But Section 1957 has a \$10,000 threshold requirement, and Section 1956 requires proof of specific intent either to promote another offense or to conceal or disguise the criminal proceeds. New Section 1960 contains neither of these requirements if the property is criminal proceeds; or alternatively, if there is proof that the purpose of the financial transaction was to commit another offense, it does not require proof that the transmitted funds were tainted by any prior misconduct. See 18 U.S.C. § 1960.

New Investigative Tools

Expansion of Money Laundering Predicates - The list of foreign crimes in the definition of "specified unlawful activity" is expanded to include public corruption and other foreign offenses. Similarly, amendment to RICO makes a long list of acts relating to terrorism predicates for money laundering. Moreover, under Section 1956(a)(2)(A), it will be an offense to send any money from any source into or out of the United States with the intent to promote such an offense.

Subpoenas for Overseas Bank Records - A new statute, 31 U.S.C. § 5318(k)(3), provides that the Attorney General or the Secretary of the Treasury may serve "a summons or subpoena" on any foreign bank that has a correspondent account in the United States, and request records relating to that correspondent account or any records maintained outside of the United States relating to the deposit of funds into the foreign bank. Congress has created this authority by requiring that any foreign bank that maintains a correspondent account in the United States must appoint a representative to accept a subpoena issued by the Attorney General or the Secretary of the Treasury for bank records. [REDACTED]

[REDACTED] This section of the Act became effective on December 25, 2001.

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Long-Arm Jurisdiction - The Act expanded the court's jurisdiction to include a foreign person, including a foreign bank, if the money laundering offense occurred in part in the United States, or the foreign bank has a correspondent account in the United States. See 18 U.S.C. § 1956(b).

Voluntary Disclosure by Banks - The Act provides immunity from civil liability for any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency. It further prohibits, with some limited exceptions, the person or entity making such disclosure from notifying the person involved in the suspicious transaction that the transaction has been reported. See 31 U.S.C. § 5318(g)(3).

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III. New Terrorism Offenses

Definitions

Domestic Terrorism - The Act created a new definition of “domestic terrorism,” corresponding to the existing definition of “international terrorism.” The term is defined to mean activities occurring primarily within the territorial jurisdiction of the United States involving acts dangerous to human life that are a violation of the criminal laws of the United States or any state and appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, or kidnaping. Investigations of “domestic terrorism” and “international terrorism” have additional investigative tools including nationwide service of search warrants and disclosure of educational records. See 18 U.S.C. § 2331; Fed. R. Crim. P. 41(a); 20 U.S.C. § 1232g; 20 U.S.C. § 9007.

Federal Crime of Terrorism (18 U.S.C. § 2332b(g)(5))- The definition was modified to include several offenses likely to be committed by terrorists, including a number of aircraft violence crimes and certain computer crimes, to the list of predicate offenses. Due to Congressional concerns about overbreadth, some crimes were removed from the list (primarily offenses involving assault and less grave property crimes). These offenses are now RICO predicates (see USA Patriot Act § 813), have a longer or no statute of limitations (18 U.S.C. § 3286), and are predicates for the collection of DNA (see Section I. above).

New Offenses

Attacks on Mass Transportation Systems - The law now prohibits various violent offenses against mass transportation systems, vehicles, facilities, or passengers. Specifically, it prohibits disabling or wrecking a mass transportation vehicle; placing a biological agent or destructive substance or device in a mass transportation vehicle with intent to endanger safety or with reckless disregard for human life; setting fire to or placing a biological agent or destructive substance or device in a mass transportation facility knowing or having reason to know that the activity is likely to disable or wreck a mass transportation vehicle; disabling mass transportation signaling systems; interfering with personnel with intent to endanger safety or with reckless disregard for human life; use of a dangerous weapon with intent to cause death or serious bodily injury to a person on the property of a mass transportation provider; conveying false information about any such offense; and attempt and conspiracy. The provision carries a maximum sentence of 20 years imprisonment, or life imprisonment if the crime results in death. See 18 U.S.C. § 1993.

Harboring Terrorists - Previously the harboring offense prohibited only the harboring of spies (see 18 U.S.C. § 792); there was no comparable terrorism provision. The new

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law prohibits harboring or concealing persons who have committed or are about to commit a variety of terrorist offenses, including destruction of aircraft or aircraft facilities, use of nuclear materials or chemical or biological weapons, use of weapons of mass destruction, arson or bombing of government property, destruction of energy facilities, sabotage of nuclear facilities, or aircraft piracy. See 18 U.S.C. § 2339.

Expert Advice/Assistance and Material Support - The prohibition on providing material support or resources to terrorists was expanded to include expert advice and assistance. This makes the offense applicable to experts who provide advice or assistance knowing or intending that it is to be used in preparing for or carrying out terrorism crimes, such as the civil engineer providing advice on the best manner to destroy a building. This provision expanded the criminal law by eliminating the restriction that such material support be within the United States, clarifying that prohibited material support includes all types of monetary instruments, and adding to the list of underlying terrorism crimes for which provision of material support is barred. Additionally, material support offenses can be prosecuted in any district in which the underlying offense was committed. The Act also clarified that the Trade Sanctions Reform and Export Enhancement Act of 2000 does not limit this prohibition. See 18 U.S.C. § 2339A.

Possession of a Biological Agent - The Act established an additional offense to the biological weapons statute of possessing a biological agent or toxin of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. Additionally it created a new offense for certain restricted persons (including felons, persons indicted for felonies, fugitives, drug users, illegal aliens, mentally impaired persons, aliens from certain terrorist states, and persons dishonorably discharged from the U.S. armed services) to possess a biological agent or toxin listed as a "select agent" by the Secretary of Health and Human Services. See 18 U.S.C. § 175.

Attempt and Conspiracy - The Act amended several terrorism crimes to add a prohibition on attempt and conspiracy resulting in penalties equal to the underlying offenses. See 18 U.S.C. § 81 (arson); 18 U.S.C. § 930(c) (killings in federal facilities); 18 U.S.C. § 1362 (injuring or destroying communications lines or systems); 18 U.S.C. § 1363 (injuring or destroying buildings or property within the special maritime and territorial jurisdiction of the United States); 18 U.S.C. § 1992 (wrecking trains); 18 U.S.C. § 2339A (material support to terrorists); 18 U.S.C. § 2340A (torture); 42 U.S.C. § 2284 (sabotage of nuclear facilities or fuel); 49 U.S.C. § 46504 (interference with flight crew members and attendants); 49 U.S.C. § 46505 (carrying weapons aboard aircraft); and 49 U.S.C. § 60123(b) (damaging or destroying an interstate gas or hazardous liquid pipeline facility).

Additional Information and Manual Changes

Additional guidance and associated manual changes will be forthcoming. Any questions should be directed to the Investigative Law Unit, [REDACTED] The text of the law,

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redline/strikeout text of affected statutes and Federal Rules, and other associated documents are posted on [REDACTED] which can be found through [REDACTED]

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